

§ 7.3.3 If the Design/Builder does not purchase such property insurance required by this Part 2 Agreement and with all of the coverages in the amount described above, the Design/Builder shall so inform the Owner in writing prior to commencement of the construction. The Owner may then effect insurance which will protect the interests of the Owner, the Design/Builder's Subcontractors and Sub-subcontractors in connection with the construction. If the Owner is damaged by the failure or neglect of the Design/Builder to purchase or maintain insurance as described above, then the Design/Builder shall bear all reasonable costs properly attributable thereto.

§ 7.3.4 Unless otherwise provided, the Design/Builder ing shall purchase and maintain such boiler and machinery insurance required by this Part 2 Agreement or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner. This insurance shall include interests of the Owner, the Design/Builder, the Design/Builder's Subcontractors and Sub-subcontractors in the Work, and the Design/Builder's Architect and other design professionals. The Owner and the Design/Builder shall be named insureds.

§ 7.3.5 A loss insured under the Design/Builder's property insurance shall be adjusted by the Design/Builder as fiduciary and made payable to the Design/Builder as fiduciary for the insureds, as their interests may appear. The Design/Builder shall pay Subcontractors their shares of insurance proceeds received by the Design/Builder, and by appropriate agreement, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 7.3.6 Before an exposure to loss may occur, the Design/Builder shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 7.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 60 days' prior written notice has been given to the Design/Builder and Owner.

§ 7.3.7 If the Owner requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Design/Builder shall, if possible, obtain such insurance, and the cost thereof shall be charged to the Design/Builder by appropriate Change Order.

§ 7.3.8 The Owner and the Design/Builder waive all rights against each other and the Architect and other design professionals, contractors, subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by and paid for by property insurance obtained pursuant to this Section 7.3 or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as trustee. The Owner or Design/Builder, as appropriate, shall require from Subcontractors and Sub-subcontractors by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated in this Section 7.3. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 7.3.9 If required in writing by a party in interest, the Design/Builder as trustee shall, upon occurrence of an insured loss, give bond for proper performance of the Design/Builder's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Design/Builder shall deposit in a separate account proceeds so received, which the Design/Builder shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Article 10. If after such loss no other special agreement is made, replacement of damaged Work shall be covered by appropriate Change Order.

§ 7.3.10 The Design/Builder as trustee shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing, within five (5) days after occurrence of loss to the Design/Builder's exercise of this power; if such objection be made, the parties shall enter into dispute resolution under procedures provided in Article 10. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

§ 7.3.11 Partial occupancy or use prior to Substantial Completion shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or

otherwise. The Owner and the Design/ Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall not, without mutual written consent, take any action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of coverage.

§ 7.4 LOSS OF USE OF INSURANCE

7.5 FORM AND LIMITS OF INSURANCE COVERAGE

7.5.1 The Design/Builder or its General Contractor shall maintain insurance in at least the following limits:

1 Worker's Compensation: Statutory

Employer's Liability: \$500,000 bodily injury per accident, minimum limits

\$500,000 bodily injury disease aggregate

\$500,000 bodily injury by disease for each accident

The General Contractor's Worker's Compensation policy shall be endorsed to waive subrogation against the Owner, its shareholders, officers and directors, the Architect and its consultants, and their agents and employees.

2 Commercial General Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis, written on the occurrence form, on a per project basis including:

Premises operations (including X, C & U).

Independent Contractor's Protective.

Products and Completed Operations to be maintained for five (5) years after final payment.

Contractual - including specified provision for the General Contractor's obligations to the extent such provision relates to personal injury or property damage.

Personal injury.

Broad form property damage including completed operations.

Minimum Limits: \$1,000,000 Each Occurrence

Bodily Injury and Property Damage

\$2,000,000 General Aggregate on a

Per Project Basis

\$2,000,000 Products and Completed

Operations, Personal Injury and Advertising

Injury Liability Aggregate

The policy shall contain an endorsement indicating the Owner as an "additional insured" under the General Contractor's Commercial General Liability coverage, and the coverage available to them under the policy is primary and non-contributory over any other coverage available to them.

3 Business Automobile Policy:

Minimum Limits: \$1,000,000 Combined Single Limit Bodily Injury and Property Damage Per Project

Coverage shall include all automobiles owned, leased, hired or borrowed.

The policy shall contain an endorsement indicating the Owner as an "additional insured" under the General Contractor's Business Automobile Policy, and the coverage available to them under the policy is primary and non-contributory over any other coverage available to them.

4 Umbrella Excess Liability:

25 22

Minimum Limits: \$5,000,000 combined single limit and aggregate (following the form of the primary insurance required)

The policy shall contain an endorsement indicating the Owner is an "additional insured" under the General Contractor's Umbrella and/or Excess Liability policy, and the coverage available to them under the policy is primary and non-contributory over any other coverage available to them.

.5 The policies provided by the General Contractor's shall provide that any obligation imposed upon the insured (including without limitation, the liability to pay premiums) shall be the sole obligation of the Design/Builder and not of any other insured.

.6 Prior to commencement of the Work, the Design/ Builder shall obtain from the General Contractor and shall furnish the Owner with a valid Certificate of Insurance confirming the insurance coverage required and stating that no reduction in, cancellation, or expiration of the policy will be made without thirty (30) days' written notice by the insurance company to the General Contractor.

.7 The Design/Builder shall cause its Architect Consultant to maintain professional liability insurance with a single limit not less than five million dollars (\$5,000,000) per claim and in the annual aggregate, such insurance to be continued in force for a period not less than five (5) years after the date of Substantial Completion of the Project. The Owner, at its expense, may require the Design/Builder to cause the Architect to purchase additional professional liability insurance, if and to the extent available.

7.6 PERFORMANCE BOND AND PAYMENT BOND

7.6.1 Design/Builder shall cause its General Contractor to provide Little Miller Act Performance and Payment Bonds in the form attached hereto as Exhibit 2, with dual obligee riders in a form acceptable to Owner, in accordance with the City Purchasing Ordinance set forth in Chapter 17 of the Rockville City Code.

7.6.2 Upon request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the Design/Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

7.6.3 All bonds shall be written through a reputable and responsible agency licensed to do business in the place in which the Project is located. The surety must be rated "A" or better as to management by Best's Insurance Guild published by A.M. Best Co., Inc., Oldwick, New Jersey 08858. Attorneys in fact who sign such surety bond must file with it a certified copy of their power of attorney to sign such bonds.

ARTICLE 8 CHANGES IN THE WORK

§ 8.1 CHANGES

§ 8.1.1 Changes in the Work may be accomplished after execution of this Part 2 Agreement, without invalidating this Part 2 Agreement, by Change Order or Construction Change Directive, subject to the limitations stated in the Contract Documents.

§ 8.1.2 A Change Order shall be based upon agreement between the Owner and the Design/Builder; a Construction Change Directive from the Owner may or may not be agreed to by the Design/Builder.

§ 8.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

8.1.4 There are three specific documents that will be produced for a fully executed modification to the contract:

1. Possible Change Order (PCO) is a written notification from the General Contractor to the Design/Builder and the Owner that there has been a condition encountered that may change the value or duration of the Contract. The General Contractor will attempt to describe the affects on cost and duration of the Contract. The PCO requires the Design/Builder and the Owner to provide direction to the General Contractor as how to proceed on the issue. Once a PCO is approved the City is obligated to modify the Contract, however the extent or cost of the modification is not final until the Change Notification (CN) is fully negotiated.

2. Change Notification (CN) is a written proposal formally requesting adjustment to the value and/or duration of the contract based on the approved PCO. This is the point where the exact value and duration of the change is negotiated. If a mutually agreed upon value can not be reached the Designer/Builder can submit the issue as a claim.

3. Change Order (CO) is a formal incorporation of the mutually agreed upon change into the contract. A CO may be one individual CN, or a roll-up of several approved CNs.

Authority and responsibilities:

Project Manager: Provided by Design/Builder, can approve changes in a value of \$25,000 or less; with a cumulative value of \$100,000. The City of Rockville must re-authorize the Project Manager additional authority once the cumulative value has been reached. For issues that exceed \$25,000, or any issue beyond the \$100,000 cumulative cap has been reached and not re-authorized, the Project Manager can only recommend that City of Rockville accept or decline a PCO or CN. The Project Manager is responsible for reviewing and negotiating all PCOs and CNs regardless of value.

Communication and Forecasting Potential Changes

The project progress meetings are the formal venue to disseminate potential changes to the scope, value, and duration of the contract. The Project Manager and Program Manager are required to attend all feasible progress meetings. The Program Manager will forward a copy of the meeting minutes to the Director of CPDS the day after each progress meeting specifically pointing out potential issues that may affect the time, value, and scope of the project. The Director of CPDS is responsible for updating the City Manager.

PCOs and CNs that are less than \$25,000 are not required to come to the City of Rockville for prior approval pursuant to the DSA except when the \$100,000 cap has been reached, and not re-authorized.

§ 8.2 CHANGE ORDERS

§ 8.2.1 A Change Order is a written instrument prepared by the Design/Builder and signed by the Owner and the Design/Builder, stating their agreement upon all of the following:

- .1 a change in the Work, if any;
- .2 the amount of the General Contractor's GMP adjustment, if any; and
- .3 the extent of the adjustment, if any, in the Contract Time.

8.2.1.4 Methods used in determining adjustments to the General Contractor's GMP may include those listed in Subparagraph 8.3.3.

§ 8.2.2 If the Owner requests a proposal for a change in the Work from the Design/Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Contract Documents.

8.2.3 Except as otherwise agreed to by the Parties, a Change Order shall include all of the Design/Builder's costs associated therewith. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct, indirect and "cumulative" effect costs associated with such change and any and all adjustments to the Guaranteed Maximum Price and the Contract Time.

8.2.4 The Design/Builder shall not accept any request for a Change Order from any person other than the Owner and may not perform any work asserted to constitute a change in the Work until the Owner has approved the Change Order in writing, unless the Owner authorizes the Design/Builder, in writing, to proceed with a change prior to the Owner's final approval. Notwithstanding anything to the contrary herein, the Design/Builder shall not charge for overtime services in the performance of any Change Order Work, unless the Owner has specifically authorized overtime in writing. Owner may competitively bid changes in the Work and Design/Builder, Subcontractors and suppliers shall provide Owner with all documents Owner requests to facilitate such competitive bidding of changes in the Work.

8.2.5 Owner may request additive and deductive changes in the Work by giving Design/Builder a written "Change Order Request" setting forth in detail the nature of the requested change. Upon receipt of a Change Order

Request, Design/Builder shall promptly (but in no event later than twenty (20) days after receipt of the Change Order Request) return to Owner, three (3) completed copies of its "Change Order Proposal" setting forth in detail, with a suitable breakdown by trades and work classifications, Design/Builder's estimate of the cost of the changes (together with appropriate data acceptable to Owner supporting such estimate, including but not limited to bids, cost estimates, and applicable unit prices) and a proposed adjustment to the Contract Time resulting from such Change Order Request. If Owner approves in writing Design/Builder's Change Order Proposal, Owner will issue and Design/Builder will execute and accept a Change Order and the Guaranteed Maximum Price and/or Contract Time shall be adjusted as set forth in such Change Order. If Design/Builder's Change Order Proposal is not agreed to by Owner in writing or if Design/Builder fails to submit a Change Order Proposal to Owner within such twenty (20) day period and Owner thereafter issues a written Construction Change Directive directing Design/Builder to perform the requested change in the Work, Design/Builder shall proceed with the Work pursuant to Paragraph 8.3 hereof.

8.2.6 The Owner will review properly prepared, timely requests by the Design/Builder for changes in the Work, including adjustments to the Guaranteed Maximum Price and Contract Time. Design/Builder's request for a change in the Work shall be properly prepared, accompanied by the proposed cost, sufficient supporting data and information to permit the Owner to make a reasonable determination without extensive investigation to determine if the change is warranted or can be considered without the preparation of additional drawings or specifications.

8.2.7.1 If the cost to the Owner of changed work is determined by the lump sum method, the Design/Builder warrants that the charge to the Owner does not exceed the sum of (a) any Subcontractor's charge to the Design/Builder for such work and (b) the Design/Builder's actual cost of the Design/Builder's work plus the permitted fee. If the cost to the Owner of changed work is determined on a time and materials basis, the Design/Builder warrants that the cost of any addition represents the true and actual cost, including Design/Builder's permitted fee, of such addition to the Design/Builder, Subcontractor or Sub-subcontractor or other entity involved in such addition. If the changed work will result in a reduction in the cost to the Owner, the Design/Builder warrants that the amount of any deduction represents the amount of deduction to the Design/Builder by the appropriate Subcontractor or Design/Builder's actual cost of the Design/Builder's work where the deduction involves work which the Design/Builder will perform.

8.2.7.2 There shall be no change in the Work, whether an alteration or addition to Guaranteed Maximum Price or to a change in the Contract Time, unless and until such alteration or addition has been authorized by a written Change Order executed and issued in accordance and in strict compliance with the requirements with this Article 8 or by written authorization to proceed with such change in the Work signed by the Owner. The requirements set forth in this Paragraph 8.2.7.2 are of the essence. No course of conduct or dealing between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not any such unjust enrichment to the Work or to the Owner in fact exists, shall form the basis of any claim for an increase in any amount due under the Contract Documents or a change in the Contract Time, and the terms of a fully-executed Change Order shall be conclusive. Nothing in this section 8.2.7.2 shall be construed to limit, in any way, the Design/Builder's right to assert a claim in accordance with this Agreement. Any claim must be made in accordance with section 11.4 of this Agreement.

§ 8.3 CONSTRUCTION CHANGE DIRECTIVES

§ 8.3.1 A Construction Change Directive is a written order signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Guaranteed Maximum Price, Contract Time, or both. Notwithstanding Subparagraph 8.2.5, the Owner at any time may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Guaranteed Maximum Price and Contract Time being adjusted accordingly.

8.3.2 A Construction Change Directive may be used in the absence of total agreement on the entitlement to or terms of a Change Order.

8.3.3 If the Construction Change Directive provides for an adjustment to the Guaranteed Maximum Price, the adjustment shall be based on one of the following methods:

1. mutual acceptance of a lump sum properly itemized and supplemented by sufficient substantiating data to

permit evaluation;

.2 unit prices stated in the Contract Documents or subsequently agreed upon;

.3 costs to be determined in a manner agreed upon by the parties, and General Contractor and any affected Subcontractor shall receive a mark-up calculated in accordance with Paragraph 5.3 of the General Contractor's Agreement (AIA 111 as modified); or

.4 as provided in Subparagraph 8.3.6.

8.3.4 Upon receipt of a Construction Change Directive, the Design/Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design/Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment, if any, in the Guaranteed Maximum Price or Contract Time.

8.3.5 A Construction Change Directive issued by the Owner and signed by the Design/Builder indicates the agreement of the Design/Builder therewith, including adjustment in the Guaranteed Maximum Price and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 8.3.6 If the Design/Builder does not respond promptly or disagrees with the method for adjustment, if any, in the General Contractor's GMP, the method and adjustment shall be equitably determined by the Owner on the basis of reasonable costs and savings of those performing the Work attributable to the change as determined as set forth herein, and any affected Subcontractor shall receive a mark-up calculated in accordance with paragraph 5.3 of the General Contractor's Agreement (AIA A111 as modified). In such case, and also under paragraph 8.3.3.3, the Design/Builder shall keep and present in such form as Owner may prescribe, an itemized accounting together with appropriate supporting data. Costs for purposes of this Subparagraph 8.3.6 shall be as set forth in Articles 7 and 8 of General Contractor's Agreement.

Also, in the event of an increase in the General Contractor's GMP, the Design/Builder's Fee as referenced in Paragraph 13.1.1, shall be added to the total cost of the change. In the event of a decrease in the General Contractor's GMP, the Design/Builder's Fee, as referenced in Paragraph 13.1.1 shall be deducted for this change.

§ 8.3.7 The amount of credit to be allowed by the Design/Builder to the Owner for deletion or change which results in a net decrease in the General Contractor's GMP will be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change. In the event of a decrease in the General Contractor's GMP, the Design/Builder's Fee, as referenced in Paragraph 13.1.1 shall be deducted for this change.

8.3.8 Pending final determination of costs of a Change Directive to the Owner, amounts not in dispute for such changes in the Work, at Owner's sole discretion, may be included in Applications for Payment accompanied by a Change Order indicating the Parties' agreement with part or all of such costs. For any portion of such costs that remain in dispute, the Owner will make an interim determination for purposes of monthly certification for payment for the costs. That determination of costs shall adjust the Guaranteed Maximum Price on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim.

§ 8.3.9 When the Owner and the Design/Builder agree upon the adjustments in the Guaranteed Maximum Price and Contract Time, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ 8.4 MINOR CHANGES IN THE WORK

§ 8.4.1 The Civil Engineer shall have authority to make minor changes in the Construction Documents and construction consistent with the intent of the Contract Documents when such minor changes do not involve General Contractor's GMP adjustment or extension of the Contract Time. Such changes shall be affected by written order and shall be binding on the Owner and Design/Builder, if approved by the Owner. The Design/Builder shall carry out such written Change Order Work promptly.

26

§ 8.5 CONCEALED CONDITIONS

§ 8.5.1 If while performing the Work, the Design/Builder encounters concealed physical conditions at the site that adversely impact the Work and (1) differ materially from those indicated in the Contract Documents (including but not limited to the Environmental/Geotechnical Reports) and other documentation regarding existing conditions given to the Design/Builder or of which the Design/Builder is aware (collectively, the "Condition Reports"), and (2) are of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, or are specifically excluded in the General Contractor's Assumptions and Clarifications, then Design/Builder shall give the Owner notice promptly before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions. Owner shall have its appropriate technical consultant promptly investigate such conditions and advise Owner and Design/Builder whether, in the technical consultant's opinion, the conditions at the site are materially different from those indicated in the Contract Documents or Condition Reports and are of an unusual nature. If Owner and Design/Builder agree on whether the conditions result in an increase to the Cost of the Work, then a Change Order shall be issued. If Owner and Design/Builder agree on whether the conditions result in a change to the date for achieving Substantial Completion, then the parties will execute an appropriate Change Order. If the parties are unable to agree on the impact, if any, to the Cost of the Work or date for achieving Substantial Completion, then Design/Builder shall make a claim therefor in accordance with the terms of this Part 2 Agreement. Notwithstanding the foregoing, no adjustment in the date for achieving Substantial Completion or the Cost of the Work shall be allowed to the extent that (a) the Design/Builder knew of those conditions prior to the date of this Agreement, or (b) information (including but not limited to the Condition Reports) was given to the Design/Builder from which those conditions should reasonably have been discovered prior to the date of this Agreement.

§ 8.6 REGULATORY CHANGES

§ 8.6.1 The Design/Builder shall be compensated for changes in the construction necessitated by the enactment or revisions of codes, laws or regulations subsequent to the submission of the Contract Documents.


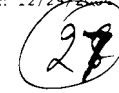
ARTICLE 9 CORRECTION OF WORK

§ 9.1 The Design/Builder shall promptly correct Work rejected by the Owner as defective or known by the Design/Builder to be defective or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed, the cost of which shall be a Cost of the Work unless 1) it is caused by the General Contractor's own negligence or failure to fulfill a specific responsibility of the General Contractor, or 2) it is caused by the negligence of one of the General Contractor's Subcontractors or suppliers and General Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Design/Builder and General Contractor shall make reasonable efforts to recover from any insurance, sureties, subcontractors or suppliers.

§ 9.2 In addition to the Design/Builder's obligations under Paragraph 3.2.9, if, within one (1) year after the date of Substantial Completion of the Work or, after the date for commencement of warranties established in a written agreement between the Owner and the Design/Builder, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Design/Builder a written acceptance of such condition. During the one year period for correction of the Work, if the Owner fails to notify the Design/Builder about such condition and give the Design/Builder an opportunity to make the correction, the Owner waives the right to require correction and to make a claim for breach of warranty against the Design/Builder.

§ 9.3 Nothing contained in this Article 9 shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time period of one (1) year as described in Section 9.2 relates only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

§ 9.4 If the Design/Builder fails to correct nonconforming Work as required or fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Design/Builder to stop the Work, or any portion thereof, until

the cause for such order has been eliminated; however, the Owner's right to stop the Work shall not give rise to a duty on the part of the Owner to exercise the right for benefit of the Design/Builder or other persons or entities.

§ 9.5 If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may give a second written notice to the Design/Builder and, seven (7) days following receipt by the Design/Builder of that second written notice and without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design/Builder, the costs of correcting such deficiencies. If the payments then or thereafter due the Design/Builder are not sufficient to cover the amount of the deduction, the Design/Builder shall pay the difference to the Owner. Such action by the Owner shall be subject to dispute resolution procedures as provided in Article 10.

9.6 In any case where, in fulfilling the requirements of the Contract Documents or of any guarantee embraced therein or required thereby, the Design/Builder disturbs any work performed by another contractor, Design/Builder shall restore such disturbed work to a condition satisfactory to the Owner and shall guarantee such restored work to the same extent as it was performed by the other contractor.

9.6.1 If during the guarantee or warranty period, any material, equipment or system for which Design/Builder is responsible requires corrective work because of defects in materials or workmanship for which Design/Builder or its Subcontractors are is responsible, the Design/Builder shall continue to undertake all required corrective work within five (5) business days (and within forty-eight (48) hours in the case of an emergency, elevator defect, or HVAC defect) after receiving the notice and work diligently until corrective work is completed. If the Design/Builder does not, in accordance with the terms and provisions of the Contract Documents, commence all corrective work within five (5) business days (or, where applicable, forty-eight (48) hours or if the Design/Builder commences such work but does not pursue it in an expeditious manner, the Owner may either notify the bonding company (if any) to have such work and/or obligations performed at no additional cost to the Owner or may perform such work and/or obligations and charge the costs thereof to the Design/Builder. The obligations of the Design/Builder or any of its Subcontractors under the terms and provisions of the Contract Documents shall not be limited to the payments made by the surety (if any) under the provisions of this Part 2 Agreement. Ten (10) months following Substantial Completion the Design/Builder shall accompany the Owner on an inspection of the Project and the Design/Builder shall promptly correct any defective Work or non-conforming Work for which Design/Builder is or its Subcontractors are responsible.

ARTICLE 10 DISPUTE RESOLUTION – MEDIATION AND ARBITRATION

10.1 Claims, disputes or other matters in question between the parties to this Part 2 Agreement arising out of or relating to this Part 2 Agreement ("Issues") or breach thereof shall be subject to the dispute resolution procedures set forth below.

10.2 The Owner and Design/Builder shall each seek mutually acceptable solutions to any issues ("Issues"), and shall use commercially reasonable efforts to resolve any Issues as expeditiously and efficiently as possible.

10.3 Any Issues arising out of this Part 2 Agreement or related to the Contract and/or Project, except those waived as provided for in Subparagraphs 5.2.3 and 5.2.4, and/or as may otherwise be provided by this Part 2 Agreement, which is not disposed of by agreement of the Parties may, at the request of either the Owner or the Design/Builder be referred to the nearest Office of Judicial Arbitration Mediation Services, Inc. ("JAMS") for mediation, with a mediator chosen jointly. If the issue cannot be settled in mediation, then it shall be resolved by final and binding arbitration under the auspices and rules of JAMS. Judgment on any award rendered by the arbitrator may be entered by any state or federal court of competent jurisdiction. The arbitration shall determine which is the prevailing party and may include in the award the payment of that party's reasonable attorney's fees and costs by the other party.

10.4 The Design/Builder will continue to perform its obligations under this Part 2 Agreement pending resolution of any Issue and the Owner will continue to make payment of amounts due that are not in dispute so as not to delay the progress of the Project.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Unless otherwise provided, this Part 2 Agreement shall be governed by the law of the State of Maryland, without giving effect to its choice of law/conflicts of law provisions.

§ 11.2 SUBCONTRACTS

§ 11.2.1 The Design/Builder, as soon as practicable after execution of this Part 2 Agreement, shall furnish to the Owner in writing the names of the persons or entities the Design/Builder will engage as contractors for the Project.

11.2.2 The proposed Subcontractors shall be financially sound and shall be experienced and skilled to perform its portion of the Work. The Owner will promptly reply to the Design/Builder in writing stating whether or not the Owner objects to any such proposed person or entity. The Design/Builder shall, upon request, furnish Owner with copies of all executed Subcontracts and purchase orders (including prices) with no deletions.

11.2.3 The Design/Builder shall not contract with a proposed person or entity to whom the Owner has made reasonable objection.

11.2.4 If the Owner reasonably objects to a person or entity proposed by the Design/Builder, the Design/Builder shall propose another to whom the Owner has no reasonable objection.

11.2.5 Acceptance of or failure to object to any or all listed Subcontractors by the Owner does not relieve Design/Builder from any responsibility for its Subcontractors.

11.2.7 By appropriate written agreement, the Design/Builder shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Design/Builder by terms of the Contract Documents, and to assume toward the Design/Builder all the obligations and responsibilities, including the responsibility for safety of the Work, which the Design/Builder, by these Documents, assumes toward the Owner and Design/Builder. Each subcontract agreement shall preserve and protect the rights of the Owner and Design/Builder under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Design/Builder that the Design/Builder, by the Contract Documents, has against the Owner. Where appropriate, the Design/Builder shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Design/Builder shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. The Design/Builder shall include in every Subcontract, except the Architect's Subcontract, a provision providing (a) for the assignment of all Subcontracts to the Owner, (b) that each Subcontractor agrees to perform its Work for the Owner upon such assignment, and (c) the Owner shall only be responsible for those obligations of Design/Builder accruing after the Owner's exercise of its right to accept assignment of the Subcontract. In addition, the Subcontract shall provide that the Subcontractor shall not be entitled to any additional payment in the event of an assignment except as set forth in Subparagraph 11.2.8. The Design/Builder shall cause its Subcontractors to require their sureties to approve such assignments. The Subcontracts shall also contain a provision that if the Subcontract is terminated the Subcontractor shall notify the appropriate government authorities and close out his permit at no additional cost.

11.2.7.1 Design/Builder is fully responsible for acts and omissions of Subcontractors, Sub-subcontractors and persons either directly or indirectly employed by them, or under their control, as Design/Builder is for its own employees.

11.2.8 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

11.2.8.1 Each subcontract agreement for a portion of the Work is assigned by the Design/Builder to the Owner provided that:

1 assignment is effective only after termination of the Contract by the Owner and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Design/Builder in writing; and

2 assignment is subject to the prior rights of the surety, if any, obligated under any bonds relating to the Contract Documents.

11.2.8.2 Upon such assignment, if the Work in connection with a particular subcontract has been suspended for more than thirty (30) days after termination of the Contract by Owner, the Subcontractor's compensation shall be

equitably adjusted for increases in direct cost incurred by that Subcontractor as a result of the suspension.

11.2.8.3 Except as provided in the last sentence of this Subparagraph 11.2.8.3, the Owner assumes no liability in connection with the Design/Builder's use of any Subcontractor to perform its obligations under this Part 2 Agreement. All rights and remedies of any Subcontractor or Sub-subcontractor shall be against Design/Builder. Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Part 2 Agreement that accrue subsequent to the Owner's exercise of any rights under a conditional assignment.

11.2.9 All suitably stored materials, supplies and equipment, wherever located when paid for by the Owner, shall automatically become the absolute property of the Owner. The Design/Builder, any Subcontractor or any Sub-subcontractor shall deliver to the Owner appropriate bills of sale. All such materials, supplies and equipment shall be free of liens and encumbrances.

§ 11.3 WORK BY OWNER OR OWNER'S CONTRACTORS

§ 11.3.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of insurance and waiver of subrogation identical to the provisions of this Part 2 Agreement. If the Design/Builder claims that delay or additional cost is involved because of such action by the Owner, the Design/Builder shall assert such claims as provided in Section 11.4.

§ 11.3.2 The Design/Builder shall afford the Owner's separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design/Builder's construction and operations with theirs as required by the Contract Documents.

11.3.2.1 The Design/Builder shall provide for coordination of the activities of the Owner's own forces and of each separate contractor (including the installation of tenant-furnished equipment) with the Work of the Design/Builder, who shall cooperate with them. The Design/Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design/Builder shall make any Owner-approved revisions to the construction schedule. The construction schedules shall then constitute the schedules to be used by the Design/Builder, separate contractors and the Owner until subsequently revised.

§ 11.3.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor, subject to the rights and limitations provided elsewhere in this Contract and in the Contract between Design/Builder and its Subcontractors.

§ 11.4 CLAIMS FOR DAMAGES

§ 11.4.1 If either party to this Part 2 Agreement suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim of additional cost or time related to this claim is to be asserted, it shall be filed in writing, and in accordance with Paragraph 11.4.1.2.

11.4.1 CLAIMS FOR ADDITIONAL COST OR ADDITIONAL TIME

11.4.1.2 If the Design/Builder wishes to make a claim for an extension of time for achieving Substantial Completion, or for an increase in the Cost of the Work not otherwise prohibited by the Contract Documents, Design/Builder shall give Owner written notice within ten (10) days after the Design/Builder first becomes aware of the occurrence of the event giving rise to such claim and before Design/Builder proceeds to perform any additional Work. Within fifteen (15) days after providing such written notice, the Design/Builder shall submit a written statement to the Owner setting forth in detail (1) the nature and cause of the claim, and (2) an itemized and substantiated statement of the time extension or claim amount requested, or if sufficient information to do so is unavailable, then a reasonable estimate of the time extension supported by such documentation as the Owner may reasonably request. If the Design/Builder has only submitted a reasonable estimate, then within thirty (30) days after submitting such reasonable estimate, Design/Builder shall submit the detailed written estimate required by the previous sentence. In the event of delay, if requested by the Owner, the Design/Builder shall also submit a plan for recovery from the effect of any delay, if recovery is possible, so as to achieve Substantial Completion on or before

the date established by the Contract Documents. Any claim not made in strict compliance with the provisions of this Paragraph 11.4.1.2 is waived to the extent the Owner is prejudiced thereby. The Design/Builder acknowledges and agrees that the Owner can waive the requirements of this Paragraph, including the waiver provision, only in writing and that Design/Builder cannot rely on any oral statement of the Owner to the contrary.

11.4.1.3 The requirements set forth in this Subparagraph 11.4.1 are of the essence. The Design/Builder shall have the burden to prove entitlement to any change in the Contract Time. Any change in Contract Time may only be effected by an authorized written Change Order signed by the Owner. No change in the Work requested by the Owner, whether an alteration or an addition to the Work, shall form the basis of a change in the Contract Time unless and until such alteration or addition has been authorized by a written Change Order executed and issued in strict compliance with the requirements of this Subparagraph 11.4.1.3 and Article 8 or by written authorization to proceed with such Owner-recognized change in the Work signed by the Owner, or as otherwise provided in the Agreement.

11.4.1.5 All claims made by the Design/Builder, or by any Subcontractor of any tier through the Design/Builder, shall be accompanied by a certification by an officer of the Design/Builder having overall responsibility for the Design/Builder's affairs stating (1) the claim is made in good faith, (2) the supporting data are accurate and complete to the best of Design/Builder's knowledge and belief; and (3) the amount requested accurately reflects the contract adjustment for which the Design/Builder believes the Owner is liable. For Subcontractor claims, the Design/Builder must obtain a certification from the Subcontractor and shall perform a reasonable review of the submitted claim. False certification of a claim will entitle the Owner to recover its costs of defending such claim including but not limited to reasonable attorney, accountant and expert fees.

11.4.2 Claims for Additional Time

11.4.2.1 If the date of Substantial Completion is delayed at any time during the progress of the Work by (i) any change in the Work requested by the Owner in writing, (ii) the fault of the Owner, another owner's participation in the Rockville Town Square development, or any employee, consultant, or separate contractor of any of them, or (iii) "Force Majeure", then the Contract Time shall be reasonably extended by Change Order for such delay pursuant to the terms of this Part 2 Agreement.

11.4.2.1.1 Each party's performance under this Agreement shall be excused to the extent and for the time such performance is delayed, interrupted or prevented by an event of force majeure. As used within this Agreement, the term "force majeure" shall mean, the following events or circumstances, to the extent that they cause the delay of performance of any obligation hereunder by the claiming party and (except as otherwise provided below) that could not, through the use of commercially reasonable efforts by the claiming party, be anticipated and mitigated:

(a) Unavoidable strikes or lockouts or inability to procure materials or suitable substitute materials or failure of utilities necessary for performance;

(b) Changes in any Applicable Laws relating to the development and/or construction of the Project or any Element thereof that materially affect the Substantial Completion of the Project or any Element thereof;

(c) Delays (as defined by the GDA) in obtaining Development Approvals for the Project or any Element thereof, provided the same have been timely submitted for approval in proper and complete form;

(d) Delays (as defined by the GDA) (but the claiming party shall have an obligation, through the use of commercially reasonable efforts, to anticipate or mitigate the event or circumstance giving rise to the Delay);

(e) Acts of God, tornadoes or other sever windstorms, hurricanes, floods, sinkholes, fires and other comparable casualties, landslides, earthquakes, and abnormally inclement weather for the area;

(f) Acts of war, terrorism, blockades, insurrection, riots, civil disturbances, or national, regional and local calamities;

(g) Other acts or circumstances to the extent they would, under then existing commercial real estate practice in the Washington, DC metropolitan area, otherwise customarily constitute a Force Majeure event.

(31)

Force Majeure shall not include matters that increase cost but do not cause delay.

11.4.2.1.2 Notwithstanding anything to the contrary contained in this Agreement all of the parties' obligations hereunder, including without limitation, all schedules contained herein, shall be subject to Force Majeure. For any Force Majeure resulting in a delay in a party's performance, provided that the claiming party is diligently working to end the Force Majeure and minimize the impact of the Force Majeure (to the extent the same is feasible through the use by the claiming party of commercially reasonable efforts), the performance of the party claiming Force Majeure shall be extended by one day for each day of delay in such party's performance attributable to the Force Majeure event. Any party claiming Force Majeure shall provide the other parties with written notice of the Force Majeure within five (5) Business Days after the claiming party obtains actual knowledge of the force Majeure event. The notice must describe the Force Majeure event, the anticipated duration of the Force Majeure (if known), and actions to be taken by the claiming party to end the Force Majeure and minimize its impact (to the extent the same are feasible through the use by the claiming party of commercially reasonable efforts.)

11.4.2.2 In the event of a delay to the date of Substantial Completion for which the Design/Builder is entitled to a time extension under Subparagraph 4.5, Design/Builder's sole damage for delay shall be compensation to the General Contractor as provided by subparagraph 4.3.7.2 of the General Contractor's Contract (A201), and compensation for the Design/Builder's actual costs similar to the General Condition Costs set out in Subparagraph 5.3.6 of the General Contractor's Agreement (A111), plus the Design/Builder's fee on such costs.

11.4.2.3 The Design/Builder represents and warrants to the Owner that (a) the Construction Schedule contains allowances for delays caused by adverse weather conditions under normal seasonal conditions and (b) no claim for increase in the Contract Time shall be made as a result of rain, snow, cold, or other weather conditions, unless such conditions are extraordinary for the prior three (3) month period taken as a whole by comparison to the weather of the same three (3) month period for each of the prior ten (10) years as set forth in the U.S. National Oceanic and Atmospheric Administration records for the area where the Work is being performed.

11.4.2.4 Notwithstanding anything to the contrary contained in this Agreement, the Design/Builder is liable to the Owner for delays only to the extent that recovery is obtained from the Architect or the General Contractor, as appropriate.

§ 11.5 INDEMNIFICATION

The Design/Builder agrees to indemnify and defend the Owner, its respective representatives, agents and employees from and against all claims, actions, suits, damages, losses, costs, liabilities and expenses, (including reasonable attorneys' fees) incurred by the Owner to the extent arising from negligent acts or omissions, willful misconduct or willful breach by the Design/Builder of any of its obligations under this Agreement, except to the extent such claims, actions, suits, damages, losses, costs, liabilities and expenses, (including attorneys' fees) arising out of the negligence of or breach of this Agreement by the Owner and its respective representatives, agents and employees, on a comparative negligence basis. The Owner agrees to indemnify and defend the Design/Builder and its respective representatives, agents and employees from and against all claims, actions, suits, damages, losses, costs, liabilities and expenses, (including reasonable attorneys' fees) incurred by the Design/Builder to the extent arising from negligent acts or omissions, willful misconduct or willful breach by the Owner of its obligations under this Agreement, except to the extent such claims, actions, suits, damages, losses, costs, liabilities and expenses, (including attorneys' fees) arising out of the negligence of or breach of this Agreement by the Design/Builder and its respective representatives, agents and employees, on a comparative negligence basis.

§ 11.5.2 In claims against any person or entity indemnified under this Section 11.5 by an employee of the Design/Builder, anyone directly or indirectly employed by the Design/Builder or anyone for whose acts the Design/Builder may be liable, the indemnification obligation under this Section 11.5 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design/Builder under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 11.6 SUCCESSORS AND ASSIGNS

11.6.1 The Owner and Design/Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. The Parties shall not assign this Part 2 Agreement or subcontract it as a whole without the written consent of the other party hereto, or shall not assign any moneys due or to become due to a party hereunder, without the previous written consent of the

other party hereto, except that the Owner may assign this Part 2 Agreement to any institutional lender providing construction financing, and the Design/Builder agrees to execute all consents reasonable required to facilitate such an assignment. If either party attempts to make such an assignment without such consent, it shall nevertheless remain legally responsible for all obligations under the this Part 2 Agreement.

11.6.2 Design/Builder shall not assign any monies due or to become due hereunder without written consent of Owner and of Design/Builder's Surety, which consent of Surety shall be filed with Owner, as well as the proposed assignment. In case Design/Builder assigns, with the proper consents, all or any part of any monies due or to become due under this Contract, such instrument or assignment must contain a clause substantially to effect that it is agreed that right of assignees in and to any monies due or to become to Design/Builder shall be subject to prior liens and claims of all persons, firms and corporations for services rendered; for payment of all laborers and mechanics for labor performed; for payment for all materials and equipment furnished and payment for all materials and equipment used or rented in performance of the Work called for in this Part 2 Agreement; and for payment of any liens, claims, or amounts due to governments or any of their funds.

§ 11.7 TERMINATION OF PROFESSIONAL DESIGN SERVICES

§ 11.7.1 Prior to termination of the services of the Architect or any other design professional designated in this Part 2 Agreement, the Design/Builder shall identify to the Owner in writing another architect or other design professional with respect to whom the Owner has no reasonable objection, who will provide the services originally to have been provided by the Architect or other design professional whose services are being terminated.

§ 11.8 EXTENT OF AGREEMENT

§ 11.8.1 This Part 2 Agreement represents the entire agreement between the Owner and the Design/Builder and supersedes prior negotiations, representations or agreements, either written or oral as to its subject matter. This Part 2 Agreement may be amended only by written instrument and signed by both the Owner and the Design/Builder.

11.8.2 Severability: If any provision of this Part 2 Agreement is, for any reason, held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision of this Part 2 Agreement, and this Part 2 Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.

11.9 WRITTEN NOTICE

11.9.1 All notices required or permitted hereunder shall be in writing and may be given by messenger or may be sent by United States registered or certified mail (return receipt requested), Federal Express Mail or other national overnight courier or by facsimile (with telephonic or electronic confirmation of receipt and also by registered or certified mail) addressed as follows:

to Design/Builder: R.D. Rockville Garage, LLC
c/o Danac Corporation
7501 Wisconsin Avenue, Suite 1120
Bethesda, MD 20814
Attn.: Ben Stonestreet
Telephone: 301-657-2800
Fax: 301-657-4560

with a copy to: Ross Development & Investment
7910 Woodmont Avenue, Suite 350
Bethesda, MD 20814
Attn.: Scott J. Ross
Telephone: 301-657-8899
Fax: 301-657-0225

If to Owner: City of Rockville
Attn.: Mr. Arthur D. Chambers
111 Maryland Avenue
Rockville, MD 20850
Tel.: 240-314-8202
Fax: 240-314-8210

with copy to F.R.I.T.
Attn.: Bill Morrow
1626 East Jefferson Street
Rockville, MD 20852-4041
Tel.: 301-998-8173
Fax: 301-998-3705

Notices shall be effective as provided in Paragraph 11.9 of the Part 1 Agreement.

11.10 TESTS AND INSPECTIONS

11.10.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. The Design/Builder shall make arrangement for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. The Design/Builder shall have the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

11.10.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 11.10.1, the Owner will, upon written authorization from the Owner, instruct the Design/Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design/Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

11.10.3 If such procedures for testing, inspection or approval under Subparagraphs 11.10.1 and 11.10.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents and any Legal Requirement, all costs made necessary by such failure including those of repeated procedures and compensation for the Design/Builder's services and expenses shall be a Cost of the Work, unless 1) it is caused by the General Contractor's own negligence or failure to fulfill a specific responsibility of the General Contractor, or 2) it is caused by the negligence of one of the General Contractor's Subcontractors or suppliers and General Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. **Design/Builder and** General Contractor shall make reasonable efforts to recover from any insurance, sureties, subcontractors or suppliers.

11.10.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Design/Builder and promptly delivered to the Design/Builder.

11.10.5 If the Owner is to observe tests, inspections or approvals required by the Contract Documents, they will do so promptly and, where practicable, at the normal place of testing.

11.10.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

11.11 REFERENCE STANDARDS AND SPECIFICATIONS

11.11.1 Various standards and specifications are incorporated by reference in the technical sections of the specifications. In all such instances, the reference shall be to the latest edition, including amendment or revision, in effect as of the date of these specifications, unless a specific issue is identified.

11.12 MATERIAL INSPECTIONS

11.12.1 The Owner has the right, but not the obligation, to inspect any material or equipment at any state of development or fabrication, whether specified or noted, including, but not limited to, the manufacturer's plant or mill. Such inspection shall not release the Design/Builder from any responsibility or liability with respect to such material or equipment.

11.12.3 Witnessed performance tests shall occur when required by governing authorities or when the Specifications

so require.

11.12.4 Testing mentioned in the technical Specifications to be performed by the Owner (a) shall be performed by the Design/Builder unless the Owner elects otherwise or the Owner expressly agrees in writing to perform such testing prior to the commencement of construction, and (b) if executed by the Owner shall be executed, and the results thereof shall be provided to the Design/Builder and the Design/Builder. Performance or nonperformance of the test by the Owner shall not relieve the Design/Builder of responsibility for compliance with requirements of the Contract Documents.

11.13. MECHANIC'S LIENS AND OTHER CLAIMS

11.13.1 Design/Builder agrees to indemnify and hold harmless Owner from any and all liens or any other claims filed in connection with this Project, and agrees to bear all costs, including reasonable attorneys' fees and expenses incurred by Owner in connection with any such lien claims as a Cost of the Work unless the lien or claim of lien is the result of the Design/Builder's failure to pay a Subcontractor, without just cause, an amount previously paid by the Owner to the Design/Builder. If, however, the purported lien or claim is the result of the Owner's failure to pay, without just cause, an amount contained in a properly submitted invoice, then the Design/Builder shall not be obligated to discharge such lien and to defend the Owner as set forth in section 11.13.2.

11.13.2 If, at any time, any purported notices of lien or notices of intent to file a lien or Petitions to Establish a lien or any other claims ("lien or other claim") are filed directly against the Owner for labor performed or materials or equipment furnished or delivered to or for the Work by any of Design/Builder's Subcontractors, the Design/Builder, within ten (10) calendar days after the date of the filing or delivery of such lien or other claim, and to the Owner's satisfaction, shall discharge, remove and post a bond satisfactory to the Owner for such lien or other claim and shall indemnify and hold the Owner harmless for all costs, including but not limited to, reasonable attorneys' fees and expert fees, regarding such lien or other claim, together with interest on the same from the date any such cost was paid by Owner until reimbursed by Design/Builder at the rate of interest provided in Paragraph 13.3 of the Agreement, but savings and excepting if such purported lien or claim is the result of the Owner's failure to pay an amount contained in a properly submitted invoice, without just cause. The obligations of Design/Builder under this Subparagraph shall survive the expiration or termination of the Contract.

11.13.3 Design/Builder shall promptly advise Owner in writing of any action, administrative or legal proceeding or investigation as to which Paragraph 11.13 may apply, and Design/Builder, at Design/Builder's expense, shall assume on behalf of Owner and Owner's Representative and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to Owner, provided that Owner and Owner's Representative shall have the right to be represented therein by advisory counsel of their own selection and at their own expense, and provided further that if the defendants in any such action include Design/Builder and Owner, or Owner's Representative, and Owner or Owner's Representative shall have reasonably concluded that there may be legal defenses available to any of them which are different from or additional to, or inconsistent with, those available to Design/Builder, or if Owner or Owner's Representative conclude Design/Builder has a conflict of interest and cannot adequately represent Owner or Owner's Representative, then Owner or Owner's Representative, or both, shall have the right to select separate counsel to participate in the defense of such action on their own behalf for which fifty percent (50%) of the cost shall be at the Design/Builder's expense as a Cost of the Work unless the lien or claim of lien is the result of the Design/Builder's failure to pay a Subcontractor, without just cause, an amount previously paid by the Owner to the Design/Builder. In the event of failure by Design/Builder to fully perform in accordance with this Subparagraph, Owner or Owner's Representative, at the option of any of them, and without relieving Design/Builder of its obligations hereunder, may so perform, but all costs and expenses, including but not limited to reasonable attorneys' fees and expert fees, so incurred by Owner and Owner's Representative in that event shall be reimbursed by Design/Builder to Owner or Owner's Representative, together with interest on the same from the date any such expense was paid by Owner or Owner's Representative until reimbursed by Design/Builder at the rate of interest provided in Subparagraph 13.3 of the Agreement, but savings and excepting if such purported lien or claim is the result of the Owner's failure to pay an amount contained in a properly submitted invoice, without just cause. The obligations of Design/Builder under this Subparagraph shall survive the expiration or termination of the Contract.

11.14 DAMAGE TO EXISTING STRUCTURES AND PROPERTY

11.14.1 The Design/Builder shall conduct his operations so as not to damage adjacent structures, existing

structures, any work installed either by him or by other contractors, or any personal property of the Owner or others. Design Builder shall repair and make good as new the damaged portions, the cost of which shall be a Cost of the Work unless 1) it is caused by the General Contractor's own negligence or failure to fulfill a specific responsibility of the General Contractor, or 2) it is caused by the negligence of one of the General Contractor's Subcontractors or suppliers and General Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers.

Design/Builder and General Contractor shall make reasonable efforts to recover from any insurance, sureties, subcontractors or suppliers.

11.15 MANUFACTURER'S WARRANTIES

11.15.1 The Design/Builder warrants that all manufacturers' or other warranties on all materials and equipment furnished by the Design/Builder shall run directly to or be specifically assigned to the Owner on demand or upon final completion of the Project.

11.15.2 The Design/Builder and its Subcontractors shall not be permitted, without Owner's prior consent, to place any signs stating the name of the Design/Builder or Subcontractors on the Project site.

11.15.3 The headings contained in the Part 2 Agreement are inserted only for convenience and reference and are not meant to define, limit or describe the scope or intent of the Part 2 Agreement or in any way to affect the terms and provisions set forth herein.

11.15.4 All matters that relate to the termination or expiration of this Part 2 Agreement, or that in the normal course may not occur or be effectuated until after such termination or expiration, as well as all rights and obligations of the parties pertaining thereto whether or not specifically stated in a particular provision in this Contract, will survive any termination or expiration of this Contract and will be given full force and effect notwithstanding any termination or expiration of this Part 2 Agreement, but such survival will not operate to extend any applicable statute of limitations.

11.15.5 The Design/Builder shall take and develop 8.5" x 11" color progress photographs of the Work twice each month at the same times and places each month. Such photographs shall be in sufficient quantity to accurately depict the point to which construction has progressed.

11.16 EQUAL OPPORTUNITY

.1 Design/Builder and Design/Builder's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. Design/Builder shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates for pay or other forms of compensation; and selection for training, including apprenticeship. Design/Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

.2 Design/Builder and Design/Builder's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

.3 If the Design/Builder fails to comply with nondiscrimination clauses of this Contract or fails to include such contract provisions in all subcontracts, this Contract may be declared void AB INITIO, cancelled, terminated or suspended in whole or in part and the Design/Builder may be declared ineligible for further contracts with the Owner. Any employee, applicant for employment, or prospective employee with information concerning any breach of these requirements may communicate such information to the City Manager who shall commence a prompt investigation of the alleged violation. Pursuant to such investigation, the Design/Builder will permit access to the contractors books, records, and accounts. If the City Manager concludes that the Design/Builder has failed to comply with nondiscrimination clauses, the remedies set out above may be invoked.

11.17 GENERAL PROVISIONS

11.17.1 All personal pronouns used in this Part 2 Agreement, whether used in the masculine, feminine, or neuter

gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, paragraphs, and subparagraphs are for convenience only and neither limit nor amplify the provisions of this Part 2 Agreement in itself. The use herein of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

11.17.2 Each party hereto agrees to do all act and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

11.17.3 Any specific requirement in this Part 2 Agreement that the responsibilities or obligations of the Design/Builder also apply to a Subcontractor is added for emphasis only and is also hereby deemed to include a Contractor or Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Design/Builder's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of the Design/Builder or a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

11.18 MEASUREMENTS AND RELATED MATTERS

11.18.1 Upon beginning Work, the Design/Builder shall check the Owner's survey and shall promptly notify the Owner of any errors in the survey.

11.19 The Owner and the Design/Builder hereby represent and warrant to each other that all necessary governmental and corporate action has been taken to enter into and fulfill this Agreement and that the person signing this Agreement on behalf of the Owner and Design/Builder, respectively, is duly authorized to do so.

11.20 In the event either party asserts a claim against the other relating to this Agreement, the party asserting the claim agrees to assert the claim only against the corporate or government entity of the other party (and that party's insurer, if applicable), and not against that party's principals, representatives, directors, officers, partners, agents, affiliates, or employees of any of them, it being expressly understood and agreed that the Owner's and the Design/Builder's principals, representatives, directors, officers, partners, agents, affiliates or employees of any of them shall have no personal liability under this Agreement for any obligation at any time.

11.21 Neither the Design/Builder nor any principal, director, officer, shareholder or employee of the Design/Builder shall accept for its or their own benefit any trade commission, discount, or similar payment or any personal or business benefit in connection with activities undertaken pursuant to this Agreement. Any such benefits offered by vendors and the like shall be for the sole and exclusive account of, and are hereby irrevocably assigned to the Owner.

11.22 The Design/Builder will include in its agreements with its Subcontractors and will require to be included in all agreements between its Subcontractors and its Sub-subcontractors a provision that the Owner is a third party beneficiary of such agreement and is entitled to enforce the terms of such agreement in its capacity as a third party beneficiary. Nothing contained herein shall be intended or deemed to give or construed as creating any third party beneficiary rights under this Part 2 Agreement to any person or entity other than Owner. The form of the third party beneficiary provision to be included in each agreement is incorporated herein as Exhibit 3.

11.23 Upon reasonable notice during regular business hours, the Owner and its agents shall have the right, from time to time, to review and audit the books and records of the Design/Builder relating to the Design/Builder's performance of this Agreement. The Design/Builder shall maintain such books and records at the Project site or at its main offices in Bethesda, Maryland.

11.24 The Owner has authorized its City Manager to enter into this Part 2 Agreement under the auspices of Section 17-88 of the Rockville City Code, having made a determination that a unique or special circumstance exists that makes competitive bidding contrary to the Owner's interest.

11.25 During and after the term of this Agreement, the Design/Builder will not divulge, disclose or otherwise

communicate any information obtained by it concerning the Owner, or other sensitive or proprietary information, to any person or entity other than those involved with the development of the Project who have a need to know such information as necessary in the reasonable conduct of the Design/Builder's and its Subcontractors' business, or as may otherwise be required by applicable law unless the Owner consents in writing to such disclosure, provided, however, that in no event shall the Design/Builder be deemed in breach of this obligation if the Design/Builder discloses any such information based on its reasonable determination that such disclosure does not violate the terms of this Paragraph 11.26.

11.26 Notwithstanding any other provision of this Contract to the contrary, to the extent that any Cost of the Work under the GMP and/or any changes to the Cost of the Work under the GMP, performed by the General Contractor, are subject to the discretion or sole discretion of the Design/Builder under its Contract with the General Contractor, such costs must be approved in advance in writing by the Owner.

ARTICLE 12 TERMINATION OF THE AGREEMENT

12.1 TERMINATION BY THE OWNER FOR CAUSE

12.1.2 The Owner may terminate the Contract if the Design/Builder:

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make prompt payment to Subcontractors for materials or labor in accordance with the respective agreements between the Design/Builder and the Subcontractors;
- .3 disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of a breach of a material provision of the Contract Documents

12.1.3 When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner, give the Design/Builder written notice of its intent to terminate. If the Design/Builder fails to cure within fifteen (15) days after receipt of such notice or if the Design/Builder fails to proceed with diligence to correct such failure if the correction cannot be completed within 15 days of the notice, the Owner may give a second written notice to the Design/Builder and seven (7) days after receipt of such second written notice by the Design/Builder, if the Design/Builder has failed to diligently take corrective action, the Owner may terminate the Design/Builder and may:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design/Builder;
- .2 accept assignment of subcontracts pursuant to Paragraph 11.2.8; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient.

12.1.4 When the Owner terminates the Part 2 Agreement for one of the reasons stated in Subparagraph 12.1.2, the Design/Builder shall not be entitled to receive further payment until the Work is finished.

12.1.5 If the unpaid balance of the most recent General Contractor's GMP estimate plus the Design/Builder's Fee exceeds the costs of finishing the work, including compensation for the Design/Builder's and Owner's Representative's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design/Builder. If such costs and damages exceed the unpaid balance, the Design/Builder shall pay the difference to the Owner.

12.1.6 When the Owner terminates the Part 2 Agreement for one of the reasons stated in Subparagraph 12.1.2, the Owner shall be entitled to recover its damages resulting from such termination including, but not limited to, all costs incurred by the Owner as a result of any default of the Design/Builder, including compensation for the Design/Builder's and Owner's Representative's services and expenses made necessary thereby, and, if the Work is not completed by the Substantial Completion date set forth in this Part 2 Agreement, actual or liquidated damages for delay to the extent provided in the Contract Documents. All amounts paid pursuant to this Subparagraph 12.1.6 shall be certified by the Owner, upon application, and the obligations of this Subparagraph 12.1.6 shall survive the

termination of this Agreement.

12.1.7 It is recognized that if the Design/Builder is adjudged bankrupt, makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors on account of the Design/Builder's insolvency, such circumstance could impair or frustrate the Design/Builder's performance of this Part 2 Agreement. Accordingly, the parties to this Part 2 Agreement agree that upon the occurrence of any such event, the Owner shall be entitled to request of the Design/Builder or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents and the Design/Builder shall have (7) business days to provide such assurances. The Design/Builder's failure to comply with such request shall entitle the Owner to terminate this Contract immediately and to the accompanying rights thereunder.

12.1.8 If Owner wrongfully terminates Design/Builder for default, such termination shall be deemed a termination for convenience and Design/Builder's sole remedy will be the recovery of those amounts set forth in Subparagraph 12.1.12.

12.1.9 SUSPENSION BY THE OWNER FOR CONVENIENCE

12.1.10 The Owner may, without cause, order the Design/Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

12.1.11 The General Contractor's GMP and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Subparagraph 12.1.10 and the Design/Builder shall be entitled to payment of the costs incurred, plus the Design/Builder's Fee, as a result of such suspension. No adjustment shall be made to the extent

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design/Builder is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Part 2 Agreement.

12.1.12 TERMINATION BY THE OWNER FOR CONVENIENCE

12.1.12.1 The Owner may, at any time, terminate the Part 2 Agreement in whole or in part for the Owner's convenience and without cause.

12.1.12.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design/Builder shall:

.1 cease all operations except as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate (or, at Owner's election, assign to Owner) all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

12.1.12.3 In case of such termination for the Owner's convenience, the Design/Builder shall be entitled to receive payment for Work (including general condition costs incurred to date of termination, a proportional amount of fee, and reasonable and necessary costs of closeout) properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with Owner's instructions, and all other costs incurred by the Design/Builder pursuant to subparagraph 13.1.1 up to and including the date of termination, including the Design/Builder's Fee on work performed up to and including the date of termination. Design/Builder waives and forfeits any claims for future fees, and/or lost anticipated profits or lost opportunity. Owner shall be credited for (i) payments previously made to Design/Builder for the terminated portion of the Work, (ii) set offs to which the Owner is entitled under the Part 2 Agreement, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Design/Builder that are part of the Cost of the Work. Subcontracts, Sub-subcontracts, and purchase orders will contain appropriate provisions for termination for convenience under this Paragraph 12.1.12.

39

§ 12.2 TERMINATION BY THE DESIGN/BUILDER

§ 12.2.1 If the Owner fails to make payment when due, the Design/Builder may give written notice of the Design/Builder's intention to terminate this Part 2 Agreement. If the Design/Builder fails to receive payment within fifteen (15) days after receipt of such notice by the Owner, the Design/Builder may give a second written notice and, fifteen (15) days after receipt of such second written notice by the Owner, may terminate this Part 2 Agreement and recover from the Owner payment for Work executed, plus the Design/Builder's Fee for the executed Work, general conditions costs incurred to date of termination, reasonable and necessary closeout costs, and for proven losses sustained upon materials, equipment, tools, and construction equipment and machinery.

12.2.1.1 It is understood and acknowledged by the parties that the Owner may make payment directly to the General Contractor upon receipt of an Application for Payment that has been approved by the Design/Builder. The Owner acknowledges that, under the GMP Contract, if ~~it~~ the City does not make payment within seven (7) days after the date established in the Contract Documents to the General Contractor the amount properly due, the General Contractor upon seven (7) additional days' written notice to the Design/Builder has a right to stop the Work until the amount owing has been received, in which case the Contract Time shall be extended appropriately and the Guaranteed Maximum Price shall be increased by the amount of the General Contractor's reasonable costs of shut-down, delay and start-up, plus interest, as provided in the GMP Contract.

12.2.2 The Design/Builder may terminate the Contract if the Work is stopped for a period of one hundred twenty (120) consecutive days through no fault of the Design/Builder or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design/Builder, for any of the following reasons:

1. issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped; or

2. an act of government, such as a declaration of national emergency which requires all Work to be stopped.

12.2.3 If one of the reasons described in Subparagraph 12.2 exists, the Design/Builder may, upon ten (10) days' written notice to the Owner, terminate the Contract and recover from the Owner any unpaid amounts due him for the Cost of the Work performed to that date plus Design/Builder's Fee on such unpaid amounts, subject to any setoffs to which the Owner is entitled under the Part 1 or this Part 2 Agreement.

12.2.4 The Design/Builder may terminate the Contract, if through no act or fault of the Design/Builder, its Subcontractors or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design/Builder, repeated suspension, delays, or interruption of the Work by the Owner as described in Paragraph 12.1.9 constitute in the aggregate more than 100% of the total number of days scheduled for completion of the Work for all three garages. In such event, Design/Builder shall recover from the Owner as set forth in section 12.2.1.

ARTICLE 13 BASIS OF COMPENSATION

The Owner shall compensate the Design/Builder in accordance with Article 5, Payments, and the other provisions of this Part 2 Agreement as described below.

§ 13.1 COMPENSATION

§ 13.1.1 For the Design/Builder's performance of the Work, as described in Section 3.2 and including any other services listed in Article 14 as part of Basic Services, the Owner shall pay the Design/Builder in current funds the Contract Sum as follows:

Payments shall be made monthly to the Design/Builder for all of Design/Builder's hard and soft costs of development, design and construction performed under this Part 2 Agreement, including but not limited to Basic Services and Additional Services, which shall be subject to a Guaranteed Maximum Price ("GMP") for Design/Builder's Subcontractors' (not

including the Architect) hard and soft costs in accordance with this Agreement and the Subcontracts. The hard and soft costs shall be paid to Design/Builder provided that the costs are for work within the Design/Builder's scope pursuant to this Agreement or written authorization of the Owner and the Work has been performed in accordance with this Agreement (except that the City may make payment directly to the General Contractor of sums approved by the Design/Builder and due the General Contractor). Subject to section 13.1.2, the Design/Builder's fee shall be a Fixed Fee of \$1,544,000. The Fixed Fee shall be paid in equal monthly installments based on the Construction Schedule. The Fixed Fee includes all of RD Rockville Garage LLC's costs.

§ 13.1.2 For Additional Services, as described in Section 3.3 and including any other services listed in Article 14 as Additional Services, compensation shall be as follows:

Any Owner authorized scope changes (not to include changes to cost of materials) exceeding Two Hundred Fifty Thousand and No/100 Dollars (\$250,000) per change, will be charged to the Owner with a fee of 4% of the cost of such changes. Any Owner-authorized scope change that results in an extension of the Contract Time and has costs associated with it will be charged to the Owner with a fee of 4% of the cost of such changes.

§ 13.2 REIMBURSABLE EXPENSES

§ 13.2.1 Reimbursable Expenses are in addition to the compensation for Basic and Additional Services, and include actual expenditures made by the Design/Builder and the Design/Builder's employees in the interest of the Project, as follows:

Reimbursable expenses to include, but not be limited to, the following, and any other expenses authorized in writing by the Owner:

- .1 Expenses in connection with out-of-town travel authorized by the Owner.
- .2 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 Expenses of photographs, reproduction and printing and costs of postage for distribution;
- .4 Expense of overtime work if authorized in writing in advance by the Owner;
- .5 Expense of renderings, models and mock-ups requested by the Owner;
- .6 Long-distance phone calls;
- .7 Equipment and office supplies utilized at the job site;
- .8 Construction field offices (leased space);
- .9 Data processing;
- .10 Messenger and overnight delivery services;
- .11 Costs associated with Critical Structure Inspections as required by the City of Rockville;
- .12 Use permit fees as applicable;
- .13 Use permit colored renderings and resubmissions as required to meet City approval; and
- .14 Professional renderings as required by the Owner in writing.

§ 13.2.2 FOR REIMBURSABLE EXPENSES, compensation shall be a multiple of **one (1.0)** times the amounts expended.

§ 13.3 INTEREST PAYMENT

§ 13.3.1 The rate of interest for past due payments shall be as follows:

The rate of interest for past due payments shall be the prime rate as set forth in The Wall Street Journal plus one percent (1%) per annum as stated from time to time, calculated daily.

13.4 The Owner shall be entitled to all savings realized by R.D. Rockville under the GMP Contract between R.D. Rockville Garage, LLC and The Whiting-Turner Contracting Company and/or any other Subcontractors with which R.D. Rockville, LLC enters into a GMP Contract for this Project. Reimbursement of any such savings shall be made to Owner within seven days of payment and/or realization of such savings by R.D. Rockville Garage, LLC under any such GMP Contract.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design/ Builder's principal places of business, at the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion, modification or other requirements, such as written disclosures or waivers.)

ARTICLE 14 OTHER CONDITIONS AND SERVICES

§ 14.1 The Basic Services to be performed shall be commenced upon issuance of a Notice to Proceed or Purchase Order and subject to authorization to continue, and, subject to authorized adjustments and to delays not caused by the Design/Builder, Substantial Completion shall be achieved as per Section 4.3 of this Agreement. R.D. Rockville Garage, LLC shall use best commercially reasonable efforts to recover all liquidated damages from its General Contractor and other Subcontractors for late completion and the Owner shall be entitled to all liquidated damages recovered by R.D. Rockville Garage, LLC from its General Contractor and other Subcontractors.

§ 14.2 The Basic Services beyond those described in Article 3 are as follows:

§ 14.3 Other Services beyond those described in Article 3 are as follows:

1. Building Permit fees will be paid by the Owner.
2. Inspection fees will be paid by the Owner.
3. Connection fees will be paid by the Owner.
4. The Design/Builder will submit a monthly invoice for construction field offices and appurtenances, and such costs will be paid by the Owner.
5. Deep cleaning of Building Structures such as Vacuuming of carpets, waxing of floors, cleaning of glass, windows and light fixtures, etc. - is not included. These services can be provided by Design/Builder for an additional cost.
6. Engineering services that will overlap the site contract that are not included within the public garage contract are not included. For example, building plats and site plats that require coordination.

§ 14.4 The Design/Builder shall submit an Application for Payment on or before the 10th day of each month, to be paid, if properly applied for and if payment is due in accordance with the terms of this Part 2 Agreement within 15 business days of submission of the Application of Payment.

The Design/Builder shall submit to the Owner an itemized Application for Payment, notarized, showing in complete detail all moneys paid out, costs incurred by Design/Builder on account of the Work during the previous period for which Design/Builder is to be reimbursed or the value of the Work performed, and the amount of Design/Builder's payment due as provided in the Owner-Design/Builder Agreement, releases and waivers from Design/Builder and the General Contractor through the date of the last prior payment, and, if requested by the Owner, additional supporting documentation reasonably required by the Owner, including payrolls (if applicable) for all labor costs, copies of canceled checks, the method of allocating the Costs of the Work (e.g., hourly rates and unit costs), all invoices or bills received from vendors (if necessary) and copies of Subcontractor requisitions included in the cost of the Work and rate of cost and reflecting retainage as set forth in the Owner-Design/Builder Agreement.

In the first Application for Payment submitted under this Part 2 Agreement, the Design/Builder shall include, and the Owner shall pay, the Design/Builder's portion of the Fixed Fee referenced in section 13.1.1 for the period July 2004 through February 2005, in the amount of \$434,250 (\$48,250/month x 9 months). In each

42

Application for Payment submitted after February 2005, the Design/Builder shall include its monthly portion of the Fixed Fee referenced in section 13.1.1.

§ 14.5 Exhibits

(List the documents by specific title and date; include any required performance and payment bonds.)

The following documents are attached and incorporated into this Agreement:

Exhibit 1	Construction Schedule RS-14
Exhibit 2	Performance and Payment Bond Forms
Exhibit 3	Third Party Beneficiary Form
Exhibit 4	Guaranteed Maximum Price Contract

14.6 As a material condition of this Part 2 Agreement, Design/Builder agrees to enter into a Guaranteed Maximum Price Contract with its General Contractor for performance of the Work under this Part 2 Agreement in the form attached hereto and incorporated herein by reference as Exhibit 4. Design/Builder agrees not to modify the GMP Contract without the written approval of such modification by the Owner except as expressly provided in section 8.1.4. Owner's approval shall not be unreasonably withheld.

Title

Date

This Agreement entered into as of the day and year first written above.

OWNER

DESIGN/BUILDER

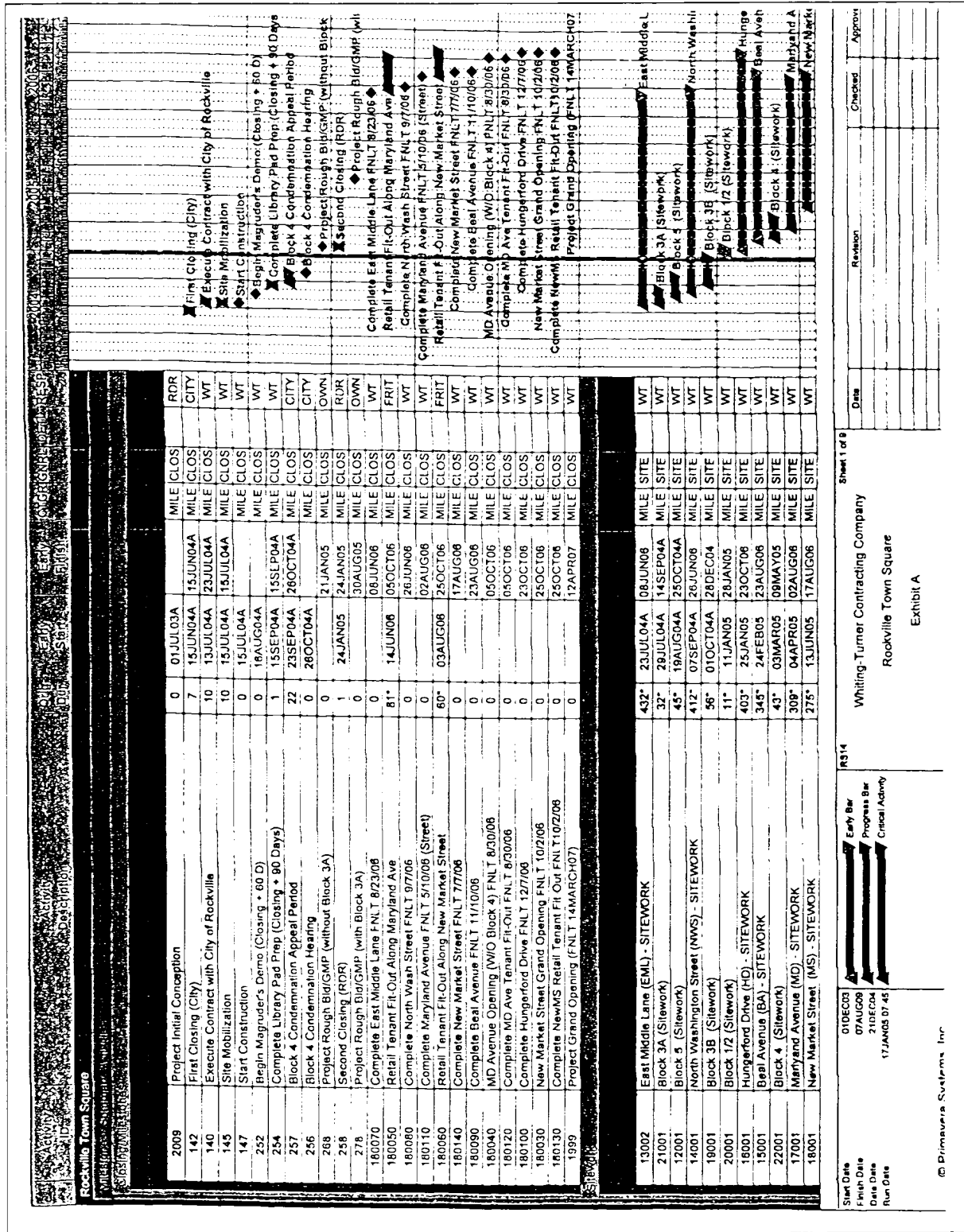
(Signature)

(Signature)

(Printed name and title)

(Printed name and title)

Exhibit 1 Construction Schedule RS-14



454

Activity ID	Activity Description	Start	End	Early Start	Early Finish	Early Duration	Activity	Start	End	Early Start	Early Finish	Early Duration			
Level B2 (Garage)															
50040	Garage Structure - B2 Level (HAMMOCK B5)	48*	29OCT04A	13JAN05	MILE 5	B2	WT	50090	Garage Structure - B1 Level (HAMMOCK B5)	47*	17DEC04A	07MAR05	MILE 5	B1	WT
50050	MEP Rough-In - B2 Level (HAMMOCK B5)	116*	02DEC04A	10JUN05	MILE 5	B2	WT	50100	MEP Rough-In - B1 Level (HAMMOCK B5)	27*	17MAY05	29JUN05	MILE 5	B1	WT
50060	Finishes - B2 Level (HAMMOCK B5)	148*	16SEP05	08MAY06	MILE 5	B2	WT	50110	Finishes - B1 Level (HAMMOCK B5)	138*	14OCT05	29MAY06	MILE 5	B1	WT
50070	MEP Trim-Out - B2 Level (HAMMOCK B5)	17*	23SEP05	18OCT05	MILE 5	B2	WT	50120	MEP Trim-Out - B1 Level (HAMMOCK B5)	17*	21OCT05	15NOV05	MILE 5	B1	WT
Level B1 (Garage)															
50090	Garage Structure - B1 Level (HAMMOCK B5)	47*	17DEC04A	07MAR05	MILE 5	B1	WT	50100	MEP Rough-In - B1 Level (HAMMOCK B5)	27*	17MAY05	29JUN05	MILE 5	B1	WT
50100	MEP Rough-In - B1 Level (HAMMOCK B5)	27*	17MAY05	29JUN05	MILE 5	B1	WT	50110	Finishes - B1 Level (HAMMOCK B5)	138*	14OCT05	29MAY06	MILE 5	B1	WT
50110	Finishes - B1 Level (HAMMOCK B5)	138*	14OCT05	29MAY06	MILE 5	B1	WT	50120	MEP Trim-Out - B1 Level (HAMMOCK B5)	17*	21OCT05	15NOV05	MILE 5	B1	WT
Level 1 (Retail)															
50140	Building Structure - Level 1 Retail (HAMMOCK B5)	81*	08FEB05	20JUN05	MILE 5	L1	WT	50150	MEP Rough-In - Level 1 Retail (HAMMOCK B5)	33*	09JUN05	27JUL05	MILE 5	L1	WT
50150	MEP Rough-In - Level 1 Retail (HAMMOCK B5)	33*	09JUN05	27JUL05	MILE 5	L1	WT	50160	Finishes - Level 1 Retail (HAMMOCK B5)	33*	05APR06	29MAY06	MILE 5	L1	WT
50160	Finishes - Level 1 Retail (HAMMOCK B5)	33*	05APR06	29MAY06	MILE 5	L1	WT	50170	MEP Trim-Out - Level 1 Retail (HAMMOCK B5)	16*	12APR06	04MAY06	MILE 5	L1	WT
Mezzanine Level (Residential)															
50180	Building Structure - Mez. Level (HAMMOCK B5)	106*	04MAR05	18AUG05	MILE 5	M1	WT	50190	MEP Rough-In - Mez. Level (HAMMOCK B5)	39*	21JUL05	16SEP05	MILE 5	M1	WT
50190	MEP Rough-In - Mez. Level (HAMMOCK B5)	39*	21JUL05	16SEP05	MILE 5	M1	WT	50200	Finishes - Mez. Level (HAMMOCK B5)	40*	27SEP06	28NOV06	MILE 5	M1	WT
50200	Finishes - Mez. Level (HAMMOCK B5)	40*	27SEP06	28NOV06	MILE 5	M1	WT	50210	MEP Trim-Out - Mez. Level (HAMMOCK B5)	14*	17OCT06	07NOV06	MILE 5	M1	WT
Level 2 (Residential)															
50230	Building Struct - Level 2 Residential (HAMMOCK B	25*	19AUG05	23SEP05	MILE 5	L2	WT	50240	MEP Rough-In - Level 2 Residential (HAMMOCK B5)	40*	02SEP05	02NOV05	MILE 5	L2	WT
50240	MEP Rough-In - Level 2 Residential (HAMMOCK B5)	40*	02SEP05	02NOV05	MILE 5	L2	WT	50250	Finishes - Level 2 Residential (HAMMOCK B5)	49*	13SEP06	23NOV06	MILE 5	L2	WT
50250	Finishes - Level 2 Residential (HAMMOCK B5)	49*	13SEP06	23NOV06	MILE 5	L2	WT	50260	MEP Trim-Out - Level 2 Residential (HAMMOCK B5)	18*	20SEP06	16OCT06	MILE 5	L2	WT
Level 3 (Residential)															
50270	Building Struct - Level 3 Residential (HAMMOCK B	25*	26SEP05	02NOV05	MILE 5	L3	WT	50280	MEP Rough-In - Level 3 Residential (HAMMOCK B5)	38*	17OCT05	08DEC05	MILE 5	L3	WT
50280	MEP Rough-In - Level 3 Residential (HAMMOCK B5)	38*	17OCT05	08DEC05	MILE 5	L3	WT	50290	Finishes - Level 3 Residential (HAMMOCK B5)	49*	17AUG06	30OCT06	MILE 5	L3	WT
50290	Finishes - Level 3 Residential (HAMMOCK B5)	49*	17AUG06	30OCT06	MILE 5	L3	WT	50300	MEP Trim-Out - Level 3 Residential (HAMMOCK B5)	18*	23AUG06	18SEP06	MILE 5	L3	WT
Level 4 (Residential)															
50310	Building Struct - Level 4 Residential (HAMMOCK B	25*	03NOV05	08DEC05	MILE 5	L4	WT	50320	MEP Rough-In - Level 4 Residential (HAMMOCK B5)	38*	23NOV05	23JAN06	MILE 5	L4	WT
50320	MEP Rough-In - Level 4 Residential (HAMMOCK B5)	38*	23NOV05	23JAN06	MILE 5	L4	WT	50330	Finishes - Level 4 Residential (HAMMOCK B5)	56*	19JUL06	06OCT06	MILE 5	L4	WT
50330	Finishes - Level 4 Residential (HAMMOCK B5)	56*	19JUL06	06OCT06	MILE 5	L4	WT	50340	MEP Trim-Out - Level 4 Residential (HAMMOCK B5)	18*	28JUL06	21AUG06	MILE 5	L4	WT

Sheet 2 of 9

Whilling-Turner Contracting Company
Rockville Town Square
Exhibit A

Start Date: 01 DEC 03
Finish Date: 07 AUG 06
Date Date: 21 DEC 04
Run Date: 17 JAN 05 07:43

Early Bar
Progress Bar
Critical Activity

01 DEC 03
07 AUG 06
21 DEC 04
17 JAN 05 07:43

Revision

Date

Checked

Approve

© Primavera Systems, Inc.

Activity	Activity Description	Start Date	End Date	Duration	Early Start	Early Finish	Early Duration	Early Resource	Early Cost	Early Status	Early Notes
Level 3 (Residential)											
30020	Building Struct - Level 3 Residential (HAMMOCK-3)	22*	21SEP05	24OCT05	MILE	3B	L3	WT			Building Struct - Level 3 Residential (HAMMOCK-3)
30021	MEP Rough-In - Level 3 Residential (HAMMOCK-3B)	28*	28NOV05	13JAN06	MILE	3B	L3	WT			MEP Rough-In - Level 3 Residential (HAMMOCK-3B)
30022	Finishes - Level 3 Residential (HAMMOCK-3B)	42*	15JUN06	15AUG06	MILE	3B	L3	WT			Finishes - Level 3 Residential (HAMMOCK-3B)
30023	MEP Trim-Out - Level 3 Residential (HAMMOCK-3B)	18*	22JUN06	18JUL06	MILE	3B	L3	WT			MEP Trim-Out - Level 3 Residential (HAMMOCK-3B)
Level 4 (Residential)											
30024	Building Struct - Level 4 Residential (HAMMOCK-3)	22*	25OCT05	24NOV05	MILE	3B	L4	WT			Building Struct - Level 4 Residential (HAMMOCK-3)
30025	MEP Rough-In - Level 4 Residential (HAMMOCK-3B)	28*	05JAN06	20FEB06	MILE	3B	L4	WT			MEP Rough-In - Level 4 Residential (HAMMOCK-3B)
30026	Finishes - Level 4 Residential (HAMMOCK-3B)	40*	18MAY06	19JUN06	MILE	3B	L4	WT			Finishes - Level 4 Residential (HAMMOCK-3B)
30027	MEP Trim-Out - Level 4 Residential (HAMMOCK-3B)	16*	25MAY06	19JUN06	MILE	3B	L4	WT			MEP Trim-Out - Level 4 Residential (HAMMOCK-3B)
Level 5 (Residential)											
30028	Building Struct - Level 5 Residential (HAMMOCK-3B)	23*	28NOV05	03JAN06	MILE	3B	L5	WT			Building Struct - Level 5 Residential (HAMMOCK-3B)
30029	MEP Rough-In - Level 5 Residential (HAMMOCK-3B)	28*	16FEB06	04APR06	MILE	3B	L5	WT			MEP Rough-In - Level 5 Residential (HAMMOCK-3B)
30030	Finishes - Level 5 Residential (HAMMOCK-3B)	39*	19APR06	20JUN06	MILE	3B	L5	WT			Finishes - Level 5 Residential (HAMMOCK-3B)
30031	MEP Trim-Out - Level 5 Residential (HAMMOCK-3B)	15*	26APR06	19MAY06	MILE	3B	L5	WT			MEP Trim-Out - Level 5 Residential (HAMMOCK-3B)
Block 3B											
1920	Block 3B Construction (HAMMOCK-3B)	415*	25JAN05	09NOV06	MILE	3B	3B	WT			Block 3B Construction (HAMMOCK-3B)
75000	Start Block 3B Construction	0	25JAN05	09NOV06	MILE	3B	3B	WT			Start Block 3B Construction
75010	Finish Block 3B Construction FNL T 11/30/06	0	09NOV06	09NOV06	MILE	3B	3B	WT			Finish Block 3B Construction FNL T 11/30/06
Block 1/2											
1930	Block 1/2 Construction	448*	03FEB05	11JAN07	MILE	1/2	1/2	WT			Block 1/2 Construction
100000	Start Block 1/2 Construction	0	03FEB05	11JAN07	MILE	1/2	1/2	WT			Start Block 1/2 Construction
100001	Finish Block 1/2 Construction FNL T 12/29/06	0	11JAN07	11JAN07	MILE	1/2	1/2	WT			Finish Block 1/2 Construction FNL T 12/29/06
Level B1 (Garage)											
100180	MEP Rough-In - B1 Level (HAMMOCK-B2)	86*	24MAR05	03AUG05	MILE	2	B1	WT			MEP Rough-In - B1 Level (HAMMOCK-B2)
100020	Garage Structure - B1 Level (HAMMOCK-B2)	42*	01APR05	06JUN05	MILE	2	B1	WT			Garage Structure - B1 Level (HAMMOCK-B2)
100290	Finishes - B1 Level (HAMMOCK-B2)	107*	22JUL05	20DEC05	MILE	2	B1	WT			Finishes - B1 Level (HAMMOCK-B2)
100400	MEP Trim-Out - B1 Level (HAMMOCK-B2)	18*	29JUL05	23AUG05	MILE	2	B1	WT			MEP Trim-Out - B1 Level (HAMMOCK-B2)
Level 1 (Garage)											
100030	Garage Structure - Precast Level 1 (HAMMOCK-B2)	88*	17MAY05	28SEP05	MILE	2	G1	WT			Garage Structure - Precast Level 1 (HAMMOCK-B2)
100190	MEP Rough-In - Precast Level 1 (HAMMOCK-B2)	15*	28FEB06	24MAR06	MILE	2	G1	WT			MEP Rough-In - Precast Level 1 (HAMMOCK-B2)
100300	Finishes - Precast Level 1 (HAMMOCK-B2)	15*	08MAR06	28MAR06	MILE	2	G1	WT			Finishes - Precast Level 1 (HAMMOCK-B2)
100410	MEP Trim-Out - Precast Level 1 (HAMMOCK-B2)	11*	27MAR06	10APR06	MILE	2	G1	WT			MEP Trim-Out - Precast Level 1 (HAMMOCK-B2)

Start Date	01DEC03	RS14	Whiting-Turner Contracting Company	Sheet 4 of 9	Date	Checked	Approved
Finish Date	07AUG06		Rockville Town Square				
Start Date	21DEC04		Exhibit A				
Finish Date	17JAN05 07:45						

4
47

Activity ID	Description	Start Date	Finish Date	Duration	Early Start	Early Finish	Late Start	Late Finish	Total Float	Free Float	Activity Type	Notes
110230	MEP Trim-Out - Level 3 Residential (HAMMOCK B1)	19*	06APR06	02MAY06	MILE	1	L3	WT				MEP Trim-Out - Level 3
Level 4 (Residential)												
110040	Building Struct - Level 4 Residential (HAMMOCK B1)	27*	27SEP05	07NOV05	MILE	1	L4	WT				Building Struct - Level 4 Res
110140	MEP Rough-In - Level 4 Residential (HAMMOCK B1)	42*	20OCT05	21DEC05	MILE	1	L4	WT				MEP Rough-In - Level 4 Res
110190	Finishes - Level 4 Residential (HAMMOCK B1)	32*	28FEB06	19APR06	MILE	1	L4	WT				Finishes - Level 4 Res
110240	MEP Trim-Out - Level 4 Residential (HAMMOCK B1)	15*	09MAR06	03APR06	MILE	1	L4	WT				MEP Trim-Out - Level 4
Level 5 (Residential)												
110050	Building Struct - Level 5 Residential (HAMMOCK B1)	27*	08NOV05	16DEC05	MILE	1	L5	WT				Building Struct - Level 5 Res
110150	MEP Rough-In - Level 5 Residential (HAMMOCK B1)	35*	30NOV05	27JAN06	MILE	1	L5	WT				MEP Rough-In - Level 5 Res
110250	Finishes - Level 5 Residential (HAMMOCK B1)	38*	19JAN06	23MAR06	MILE	1	L5	WT				Finishes - Level 5 Res
110200	MEP Trim-Out - Level 5 Residential (HAMMOCK B1)	23*	26JAN06	03MAR06	MILE	1	L5	WT				MEP Trim-Out - Level 5
Roof Level												
110060	Building Exterior - Roofing (HAMMOCK B1)	40*	21DEC05	28FEB06	MILE	1	ROOF	WT				Building Exterior - Roof
Block 1/2												
100002	Block 1 Construction	393*	03FEB05	13OCT06	MILE	1	1/2	WT				Block 1 Construction
100003	Finish Block 1 Construction FNL 12/29/06	0		13OCT06	MILE	1	1/2	WT				Finish Block 1 Construction FNL 12/29/06
Level B2 (Garage)												
400020	Retaining Wall/FND at Garage (HAMMOCK B4)	51*	10MAY05	28JUL05	MILE	4	B2	WT				Retaining Wall/FND at Garage (HA
400030	Garage Structure - Precast Level B2 (HAMMOCK B4)	44*	05AUG05	10OCT05	MILE	4	B2	WT				Garage Structure - Precast Level
400100	MEP Rough-In - Precast Level B2 (HAMMOCK B4)	33*	08DEC05	02FEB06	MILE	4	B2	WT				MEP Rough-In - Precast Level
400170	Finishes - Precast Level B2 (HAMMOCK B4)	57*	26DEC06	15MAR07	MILE	4	B2	WT				Finishes - Precast Level B2 (HAMMOCK B4)
400240	MEP Trim-Out - Precast Level B2 (HAMMOCK B4)	18*	03JAN07	26JAN07	MILE	4	B2	WT				MEP Trim-Out - Precast Level B2 (HAMMOCK B4)
Level B1 (Garage)												
400040	Garage Structure - Precast Level B1 (HAMMOCK B4)	44*	09AUG05	13OCT05	MILE	4	B1	WT				Garage Structure - Precast Level
400110	MEP Rough-In - Precast Level B1 (HAMMOCK B4)	30*	26JAN06	16MAR06	MILE	4	B1	WT				MEP Rough-In - Precast Level B1 (HAMMOCK B4)
400180	Finishes - Precast Level B1 (HAMMOCK B4)	57*	23NOV06	15FEB07	MILE	4	B1	WT				Finishes - Precast Level B1 (HAMMOCK B4)
400250	MEP Trim-Out - Precast Level B1 (HAMMOCK B4)	18*	04DEC06	28DEC06	MILE	4	B1	WT				MEP Trim-Out - Precast Level B1 (HAMMOCK B4)
Level 1 (Garage)												
400050	Garage Structure - Precast Level 1 (HAMMOCK B4)	44*	11AUG05	17OCT05	MILE	4	G1	WT				Garage Structure - Precast Level
400120	MEP Rough-In - Precast Level 1 (HAMMOCK B4)	27*	06MAR06	17APR06	MILE	4	G1	WT				MEP Rough-In - Precast Level 1 (HAMMOCK B4)
400190	Finishes - Precast Level 1 (HAMMOCK B4)	53*	01NOV06	18JAN07	MILE	4	G1	WT				Finishes - Precast Level 1 (HAMMOCK B4)
400260	MEP Trim-Out - Precast Level 1 (HAMMOCK B4)	15*	07NOV06	29NOV06	MILE	4	G1	WT				MEP Trim-Out - Precast Level 1 (HAMMOCK B4)
Level 2 (Garage)												
400060	Garage Structure - Precast Level 2 (HAMMOCK B4)	44*	18AUG05	20OCT05	MILE	4	G2	WT				Garage Structure - Precast Level

Start Date	01DEC03	Early Bar	RS14	Sheet 7 of 9
Finish Date	07AUG06	Progress Bar	Whiting-Turner Contracting Company	
Release Date	21DEC04	Critical Activity	Rockville Town Square	
Run Date	17JAN05 07:45		Exhibit A	
Revised		Checked	Approved	

Exhibit 2

Performance and Payment Bond Forms

SAMPLE CONTRACT PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That we (1) _____
_____ and _____

a (2) _____ and a (2) _____

hereinafter call "Principal" and (3) _____
of _____, State of _____

hereinafter called the "Surety", are held and firmly bound unto (4) The Mayor and Council of Rockville, Maryland, hereinafter called "Owner", in the penal sum of _____ (\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with the Owner, dated the day of _____, 20____, a copy of which is hereto attached and made a part hereof for the service of: _____

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

53

10
106

CONTRACT PERFORMANCE BOND

PAGE 2

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IT WITNESS WHEREOF, this instrument is executed in two (2) counterparts, each one of which shall be deemed an original, this the day of _____, 20_____.

ATTEST

Principal

(Principal) Secretary

By _____ (S)

(Address)

Witness as to Principal

(Address)

ATTEST:

Surety

By _____
Attorney-in-Fact

(Surety) Secretary

Witness as to Surety

(Address)

NOTE: Date of Bond must not be prior to date of Contract.

- (1) Correct name of Contractor
- (2) A Corporation, a Partnership or an Individual
- (3) Name of Surety
- (4) Name of Owner
- (5) If Contract is Partnership all partners should execute bond

54

11
57

SAMPLE
CONTRACT PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That we (1) _____

_____ a (2) _____

hereinafter called "Principal" and (3) _____

of _____, State of _____

hereinafter called the "Surety", are held and firmly bound unto (4) The Mayor

and Council _____, of Rockville, Maryland, hereinafter called "Owner", in the penal sum of _____ Dollars (\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with the Owner, dated the day of _____ 20____, a copy of which is hereto attached and made a part hereof for the construction of:

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

(over)

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in two (2) counterparts, each one of which shall be deemed an original, this the day of _____ 20____.

ATTEST: _____ Principal

(Principal) Secretary

BY _____ (S)

(Address)

Witness as to Principal

(Address)

ATTEST: _____ Surety
By _____ Attorney-in-Fact

(Surety) Secretary

Witness as to Surety

(Address)

NOTE: Date of bond must not be prior to date of Contract

- (1) Correct name of Contractor
- (2) A Corporation, a Partnership or an Individual
- (3) Correct name of Surety
- (4) Correct name of Owner
- (5) If Contractor is a Partnership, all partners should execute the bond

Exhibit 3
Third Party Beneficiary Provision to be Incorporated
Into Agreement Between Design/Builder (referenced below as "Owner")
and Its Subcontractors

It is the express intent of both the Owner and Contractor that the City be a third party beneficiary of this Contract. This Contract is entered into for the purpose and object of providing an express, direct, sole and exclusive benefit to the City. Owner and Contractor intend to confer a right of action upon the City to recover for any breach or nonperformance of this Contract. Nothing in this provision or anything else in this Contract is intended to nor shall it make Contractor a third party beneficiary of any agreement between the Owner and the City, nor provide any basis for such to enforce any of the terms of such agreement, including but not limited to payment provisions, against the City.

Exhibit 4
Guaranteed Maximum Price Contract
[To be Inserted]

DRAFT

AIA Document A111™ - 1997

Standard Form of Agreement Between Owner and Contractor
 where the basis for payment is the **COST OF THE WORK PLUS A FEE** with a negotiated Guaranteed Maximum Price

AGREEMENT made as of the 12th day of July in the year Two Thousand Four
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

RD Rockville Garage, LLC
c/o DANAC Corporation
7501 Wisconsin Avenue, Suite 1120
Bethesda, MD 20814

and the Contractor:
(Name, address and other information)

The Whiting Turner Contracting Company
300 East Joppa Road, 8th Floor
Towson, MD 21286

The Project is:
(Name and location)

Construction of 3 new public parking facilities (garages), to be owned by the City of Rockville (the "City"), located on parcels owned by the City and known as Blocks 1/2, 4, and 5 of the Rockville Town Square Project in Rockville, Maryland. The Block 1/2 garage will contain approximately 537 parking spaces, the Block 4 garage will contain approximately 1,048 parking spaces, and the Block 5 garage will contain approximately 281 parking spaces. The garage areas will be poured in place and precast concrete construction.

The Architect is:
(Name, address and other information)

WDG Architecture, PLLC
1025 Connecticut Avenue, NW, Suite 300
Washington, DC 20036

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by

ELECTRONIC COPYING of any portion of this AIA Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, General Conditions of the Contract (General, Supplementary and other Conditions) (amended AIA Document A201-1997), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents and reasonably inferable by the Contractor as necessary to produce the results set forth in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others. The Work also includes, and this Contract applies to, the work performed pursuant to the "Modification to July 29, 2004 Rockville Town Center Public Improvements Agreement Between the Mayor and Council of Rockville and the Whiting-Turner Contracting Company" (the "PI Modification"). Payments made or to be made pursuant to the PI Modification are presumed to have been made pursuant to the terms of this Contract.

§ 2.1 The Preconstruction Phase is the period prior to commencement of the Work. The Contractor has performed Preconstruction Phase Services pursuant to a separate agreement with the Owner.

§ 2.2 The Contractor agrees to perform the Work in accordance with the requirements of the Contract Documents, in accordance with the prevailing construction industry standards and practices for producing public parking garages, and in compliance with the Environmental/Geotechnical Reports (as hereinafter defined) and the construction-related provisions of all applicable federal, state and local laws, codes, ordinances, regulations and orders, as well as applicable regulations of any other body with jurisdiction over the Project applicable to contractors ("Legal Requirements"). The Contractor shall inform itself fully of all Legal Requirements, shall comply with all Legal Requirements and shall cause all of its Subcontractors to similarly comply with all Legal Requirements. Neither this provision, nor any other provision of this Agreement, is to be construed as imposing on the Contractor any liability for the adequacy or completeness of the design of the Project. Contractor's responsibility for pricing and the scope of Work included in this Contract and the Guaranteed Maximum Price is addressed in Section 2.3 below.

§ 2.2.1 An essential understanding between the parties with respect to the scope of the Contractor's services is that the Contractor acknowledges and agrees that the Project is to be built in accordance with that portion of the Amended and Restated General Development Agreement for the Redevelopment of the Rockville Town Square dated June 14, 2004 and the General Development Agreement for Block 4 Public Parcel of Rockville Town Square dated June 14, 2004 (together, the "GDA") and that portion of the Design/Build Agreement Part 1 (dated May 5, 2004) and Part 2 (dated July 12, 2004) (the "D/B Agreement") set forth as Exhibit O.

§ 2.3 CONTRACTOR REVIEW

§ 2.3.1 Owner and the Contractor agree that the Owner has selected the Contractor for this Project because of the Contractor's experience in constructing similar projects. Before executing this Agreement and before commencing construction for any phase of the Work, the Contractor carefully reviewed and shall carefully review the Project Site, all available Contract Documents, all Legal Requirements, the environmental and geotechnical reports listed in Exhibit H hereto (the "Environmental/Geotechnical Reports"), and all other exhibits hereto.

§ 2.3.2 The Contractor shall perform, and the Contract Sum includes, all construction necessary to result in a complete Project, including fully operational and functional components as required by the Contract Documents and all things that an experienced contractor that has constructed many similar projects and performed the Preconstruction Services could reasonably have recognized and included in the Guaranteed Maximum Price. Therefore, the Contractor represents that if he encounters any such things which are not specifically included in the Contract Documents, the Contractor shall promptly report them to the Owner; however, the cost to perform any additional Work necessary to complete the Project, or any increase in the Cost of The Work resulting from any impact on other Work or any additional Work necessary to complete the Project shall not form a basis for an increase in the Guaranteed Maximum Price or the Contract Time. Neither this provision, nor any other provision of

this Agreement, is to be construed as imposing on the Contractor any liability for the adequacy or completeness of the design of the Project.

§ 2.3.3 Except as otherwise specifically provided in the Contract Documents, as part of the Work, the Contractor is responsible for all construction necessary to satisfy all Legal Requirements, with no increases in the Guaranteed Maximum Price or Contract Time.

§ 2.3.4 The Contractor acknowledges that (a) the Contract Sum includes sufficient consideration for all costs which may result from the risks assumed by the Contractor in this Contract, including, without limitation, this Section 2.3, (b) the Contractor waives all rights to claim additional costs or additional time as a result of the assumption of these risks, and (c) the provisions of this Section 2.3 apply notwithstanding any provisions to the contrary contained in the Contract Documents.

§ 2.4 Without otherwise limiting the Contractor's obligations, duties and agreements set forth in this Agreement or in the General Conditions, the Contractor shall carefully inspect the Project site, particularly as it relates to adjacent property and structures located adjacent to or near the Project site, undertake all reasonable measures necessary to protect adjacent or nearby structures and property against damage or loss and conduct its operations in a manner so as not to damage adjacent or nearby structures or property. Notwithstanding anything else to the contrary contained in the Contract Documents (other than the Assumptions and Clarifications set forth in Exhibit R), any damage to or loss of adjacent or nearby structures or property caused by the negligence or breach of contract of the Contractor, a Subcontractor, or anyone for whom they may be responsible shall be the responsibility of the Contractor and shall be remedied by the Contractor, the cost of which shall be a Cost of the Work unless (1) it is caused by the Contractor's own negligence, or (2) it is caused by the negligence of one of the Contractor's Subcontractors or suppliers and Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Contractor shall make all reasonable efforts to recover such costs from any insurance, sureties, Subcontractors, or suppliers.

§ 2.5 ENVIRONMENTAL PROTOCOL

§ 2.5.1 In all events, the Contractor must follow the environmental protocol listed in Exhibit I hereto.

§ 2.6 COORDINATION WITH OTHER CONSTRUCTION

§ 2.6.1 The parties acknowledge that a critical aspect of this Project is that it will be constructed at the same time as other parts of the Rockville Town Square development (a) being constructed by Contractor pursuant to separate contracts with the Owner, a party related to the Owner, and the City, and (b) being constructed by the City. The Contractor shall coordinate its Work with the Contractor's and the City's operations on other parts of the Rockville Town Square development so that those other operations are in no way impeded or delayed due to the fault of the Contractor, a Subcontractor, or anyone for whom they may be responsible. Work necessary to perform this coordination shall not form the basis for an increase to the Contract Sum, Guaranteed Maximum Price, or Contract Time. If the Contractor has fulfilled its obligations in this Section 2.6 but the City or its developers (or anyone other than Contractor for whom they are responsible under this or any other agreement for Rockville Town Square development) are delaying the critical path of the Contractor's Work or increasing the Contractor's Cost of the Work under this Agreement, then the Contractor must make a claim as set forth in General Conditions Section 4.3.5 and, subject to the other provisions of this Contract and subject to Contractor's proof of entitlement, Contractor will be entitled to an adjustment in the Contract Time and/or Guaranteed Maximum Price for any such delay.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the non-fiduciary relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and Owner and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner reasonably consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely commercially reasonable and timely manner, information required by the Contractor and to make timely payments to the Contractor in accordance with the requirements of the Contract Documents.

§ 3.1 The Owner designates Ben Stonestreet, John Jaeger, Jack Jaeger, Scott Ross, and H. Michael Schwartzman as the only representatives of Owner who are authorized to act for the Owner. Except as otherwise provided in the Contract, the Contractor shall not receive an increase in the Guaranteed Maximum Price or the Contract Time unless

the Contractor receives a Change Order or other Modification executed by Messrs. Stonestreet or Ross. The Owner shall have a minimum of twenty-four (24) hours to respond to any issue raised by the Contractor which may affect the Guaranteed Maximum Price or the Contract Time.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work is July 12, 2004, shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 4.2 The Contract Time shall be measured from the date of commencement.

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work for each garage not later than the following dates, days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

, subject to adjustments of this Contract Time as provided in the Contract Documents:

	Per Day Liquidated Damages Amount
Block 1 2 Garage - July 24, 2006	\$1,500
Block 5 Garage - July 5, 2006	\$1,500
Block 4 Garage - March 15, 2007	\$1,500

The Contractor shall achieve final completion of the Work for each garage within sixty (60) days after Substantial Completion of the Work for each garage is achieved.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time, or for bonus payments for early completion of the Work.)

§ 4.4 The term "Substantial Completion" relating to the completion of the entire Project shall mean the date certified, respectively, by the Architect and approved by the Owner when (i) construction of all of the Work is sufficiently complete in accordance with the Contract Documents, so that the Owner and City can beneficially occupy and use the Project for its intended purpose, (ii) the Architect and Contractor have prepared and Owner has approved a punchlist of Work remaining to be performed and has established a reserve, in addition to Retainage, of at least 200% of the value of the punchlist as reasonably determined by Owner, (iii) all required governmental inspections applicable to the Contractor's Work have been conducted and all final approvals required for beneficial occupancy have been obtained from public and quasi-public authorities with jurisdiction over the Project, including a Certificate of Occupancy or Non-Residential Use Permit, if required, issued by appropriate authorities (unless delayed as set forth in General Conditions of the Contract Section 4.3.8.1.1(c)), (iv) the City has accepted the parking garages, and (v) all other conditions precedent to Substantial Completion as set forth in the Contract Documents have been satisfied. The Date of Substantial Completion shall be reflected in the Contractor's Construction Schedule, prepared pursuant to Section 3.10 of the General Conditions.

§ 4.5 Contractor acknowledges and agrees that time is of the essence in completing the Work required hereunder and Contractor's failure to meet the deadlines set forth in the Schedule shall be a material breach of this Agreement. If the Contractor fails to achieve Substantial Completion of each garage by the date set forth in Section 4.3, as such date may be modified in accordance with the terms of the Contract, the Contractor shall pay the Owner liquidated damages, and not as a penalty, in the per day amounts set forth in Section 4.3 above per calendar day until Substantial Completion of the relevant garage is achieved. Owner may deduct any liquidated damages from any amounts due Contractor or Owner may require Contractor to pay any liquidated damages, which exceed amounts due Contractor, within ten (10) days after such request. Until any liquidated damages are paid to Owner, Owner shall be entitled to receive interest at the rate set forth in Section 14.2 of this Agreement. The above-stated liquidated

damages provided for herein shall be Owner's exclusive damage remedy for Contractor's failure to complete the Work on or before the date of Substantial Completion therefor, but such damages shall in no way limit Owner's other rights (e.g., termination) under the Contract or limit Owner's entitlement to damages for any breach, other than for delay, for which Contractor may be responsible pursuant to the terms of this Agreement or applicable law. Notwithstanding the prior sentence, if the liquidated damages as set forth in this Section are unenforceable, the Owner shall be entitled to receive its actual damages sustained as a result of the Contractor's failure to achieve Substantial Completion as required.

§ 4.6 The Contractor, working with the Architect, shall prepare and deliver to the Architect and to the Owner within thirty (30) days after the execution of this Agreement, for the Architect's and the Owner's review and approval, a Submittal Review Schedule setting forth reasonable and adequate time for the submission and review of all submittals.

ARTICLE 5 BASIS FOR PAYMENT

§ 5.1 CONTRACT SUM

§ 5.1.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.2 The Contractor's Fee is:

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee, and describe the method of adjustment of the Contractor's Fee for changes in the Work.)~~

A fixed amount of \$761,000 (subject to adjustment at two percent (2%) of the Cost of the Work in accordance with the Block 4 garage allowance). In addition, the Owner shall pay the Contractor an "Incentive Fee" as set forth below if the relevant garage is Substantially Complete by the deadline therefor set forth in Section 4.3 (as those deadlines may be adjusted in accordance with the terms of this Agreement):

<u>Block 1/2 Garage:</u>	<u>\$ 25,000</u>
<u>Block 4 Garage:</u>	<u>\$100,000</u>
<u>Block 5 Garage:</u>	<u>\$ 25,000</u>

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed Thirty-Nine Million Six Hundred Seventy Thousand Dollars (\$39,670,000), subject to additions and deductions by Change Order as provided in the Contract Documents and subject to the adjustments set forth in Section 5.2.1.1. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price or GMP. Costs which would cause the initial Guaranteed Maximum Price (as adjusted as allowed under this Agreement) to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

~~(Insert specific provisions if the Contractor is to participate in any savings.)~~

§ 5.2.1.1 The Guaranteed Maximum Price set forth in Section 5.2.1 is comprised of the following:

<u>Block 1/2 Garage:</u>	<u>\$11,192,250</u>
<u>Block 4 Garage:</u>	<u>\$19,593,500 (Allowance only, subject to adjustment, with \$4,365,373 being an agreed-to fixed price for a portion of such Work as set forth in the PI Modification)</u>
<u>Block 5 Garage:</u>	<u>\$ 8,884,250</u>

The \$19,593,500 for the Block 4 Garage are identified as "Allowance only, subject to adjustment" because at the time that the Guaranteed Maximum Price set forth in Section 5.2.1 was established, the design of the Block 4 Garage had not yet reached the point of development that would allow a definitive guaranteed maximum price to be calculated and fixed. If, when the design, scope and pricing of the Block 4 Garage has been finalized, the costs for that garage is more or less than the allowance therefor, the Guaranteed Maximum Price shall be adjusted accordingly by Change Order.

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

As set forth in Exhibit P.

§ 5.2.3 Unit prices, if any, are as follows:

To the extent specifically set forth in Exhibit J, such unit prices are considered complete and include (a) all materials, equipment, labor, delivery, installation, overhead and profit and (b) other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply.

§ 5.2.4 Allowances, if any, are as follows:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

As set forth in Exhibit C (Schedules of Values).

§ 5.2.5 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows:

As set forth in Exhibit R.

§ 5.2.6 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price (subject to Section 5.2.1.1 regarding the Garage 4 allowance) for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 5.3 For changes in the Work, the Contractor's, Subcontractor's and sub-subcontractor's mark-ups shall be calculated as follows:

§ 5.3.1 For changes to the Work performed by Contractor's own forces, (1) the Contractor shall receive a mark-up of ten percent (10%) of the actual direct labor and material cost of the changed Work as Contractor's Fee and (2) if the changed Work causes an increase in the Contract Time, the Contractor shall receive its actual proven increase in the General Conditions Costs and Categories set forth in Exhibit B.

§ 5.3.2 For changes to the Work performed by a Subcontractor, (1) the Contractor shall receive a mark-up of two percent (2%) of the amount owed to the Subcontractor for the performance of the changed Work as Contractor's Fee and (2) if the changed Work causes an increase in the Contract Time, the Contractor shall receive its actual proven increase in the General Conditions Costs and Categories set forth in Exhibit B.

§ 5.3.3 For changes to the Work performed by a Subcontractor and/or a sub-subcontractor, (1) each Subcontractor and/or sub-subcontractor actually performing such Work shall receive a mark-up of fifteen percent (15%) of the actual direct labor and material cost of the changed Work for its profit and overhead and (2) if the changed Work causes an increase in the Contract Time, each Subcontractor and/or sub-subcontractor actually performing such Work shall receive its actual proven increase in its General Conditions Costs. The Subcontractor or Sub-subcontractor that has retained the entity actually performing the Work shall receive a mark-up of five percent (5%) of the actual direct labor and materials costs of the changed Work for its profit and overhead and shall receive no payment for General Conditions Costs. Notwithstanding the foregoing, in no event shall mark-ups payable by the Owner for changes to the Work performed by a Subcontractor and/or Sub-subcontractor exceed in the aggregate twenty percent (20%) of the initial cost of direct labor and materials for the changed Work.

§ 5.3.4 When both additions and deletions covering related Work or substitutions are in any one change, the increase of Contractor's Fee shall be figured on the basis of the net increase, if any, with respect to the change.

§ 5.3.5 In the event of a deductive Change Order, the Contractor's Fee will not be decreased, unless otherwise mutually agreed by Owner and Contractor.

§ 5.3.6 "General Conditions Costs" as they relate to the Contractor are as set forth in Exhibit B. "General Conditions Costs" as they relate to a Subcontractor or sub-subcontractor include, but are not limited to, all costs such as field supervision, temporary utilities, field trailer and office, office supplies, computers, data processing, and similar indirect, time-related costs.

§ 5.4 COSTS IN EXCESS OF THE GUARANTEED MAXIMUM PRICE; SAVINGS

§ 5.4.1 If the actual Cost of the Work and the Contractor's Fee total less than the Guaranteed Maximum Price, then seventy percent (70%) of all savings will be kept by the Owner and thirty percent (30%) of the savings will be paid to the Contractor as part of Final Payment (subject to the limitation set forth below). If this Agreement is terminated for any reason prior to Substantial Completion, all savings shall be kept by the Owner. The Contractor shall not share in any cost savings realized from any Allowance items. Contractor's share of savings shall not exceed One Hundred Seventy-Two Thousand Dollars (\$172,000).

§ 5.4.2 If the Cost of the Work and Contractor's Fee together exceed the initial Guaranteed Maximum Price (as adjusted pursuant to the terms of this Agreement), then Contractor shall pay all of such excess from its own funds and shall have no claim against Owner on account thereof. If Owner is required to pay any such excess for any reason, Contractor shall be obligated to reimburse Owner such amounts plus interest as set forth in Section 14.2 herein plus all costs of collection, including without limitation, attorneys' fees.

§ 5.5 Contractor has provided Owner with a detailed itemization of all of Contractor's General Conditions Costs, which is attached hereto as Exhibit B (the "General Conditions Costs & Categories") and made a part hereof as these are the General Conditions Costs for which Contractor may seek reimbursement pursuant to Section 7 of this Agreement. Neither the total cost of the General Conditions Costs & Categories nor the individual line items comprising the General Conditions Costs & Categories are guaranteed, but both are subject to the Guaranteed Maximum Price.

§ 5.6 Contractor represents and warrants to Owner that, prior to performing any Work, it (i) carefully reviewed all applicable Contract Documents and (ii) can complete all Work in accordance with the Contract Documents and Legal Requirements for a cost not exceeding the Guaranteed Maximum Price, subject to Contractor's rights with regard to changes in the Contract Time and Guaranteed Maximum Price set forth in this Agreement.

§ 5.7 If any governmental authority assesses any tax against the Owner, which tax is the obligation of the Contractor or any Subcontractor, including without limitation any sales tax on materials purchased by the Contractor or any Subcontractor, then within ten (10) days after the Owner's request for payment from the Contractor, the Owner may deduct the amount of the tax and any penalty from any amount due the Contractor or the Contractor shall be obligated to reimburse the Owner an amount equal to the assessed tax and any penalties associated with such assessed tax plus interest at the rate set forth in Section 14.2 of this Agreement.

§ 5.8 The Guaranteed Maximum Price contains a "Contingency Fund" which is identified in the Schedules of Values. This Contingency Fund may be drawn upon by the Contractor to pay for Costs of the Work provided (i) Contractor provides Owner with a written explanation of each draw upon the Contingency Fund, along with back-up documentation reasonably requested by Owner, with each Application for Payment in which such draw is made, and (ii) each Application for Payment contains a report aggregating Contractor's use of the Contingency Fund. The Contingency Fund shall be used only to pay for Costs of the Work.

§ 5.9 The Contractor's Schedules of Values used to establish the Guaranteed Maximum Price are attached as Exhibit C hereto and incorporated herein by this reference. One Schedule of Values is required for each of the Block 1.2 garage, Block 4 garage, and Block 5 garage, all within the Guaranteed Maximum Price set forth in Section 5.2.1 (as adjusted). Contractor, by bidding and re-bidding of the Work, negotiation with Subcontractors or otherwise, shall undertake to reduce the actual amounts of the subcontracts entered into by Contractor for the performance of the Work. The difference between (i) the subcontract amounts used to establish the Guaranteed Maximum Price as set forth in the Schedules of Values attached hereto as Exhibit C and (ii) the sum of the actual amounts of the subcontracts entered into by Contractor for the performance of the Work, including any early payment discounts, shall hereinafter be referred to as "Buy-Out Savings." Contractor shall inform Owner, in writing, of the Buy-Out Savings for each trade within thirty (30) days after such buy-out and shall provide Owner with any documentation requested by Owner related to the calculation of the Buy-Out Savings. The Buy-Out Savings shall be added to the Contingency Fund set forth in Section 5.8 above.

65

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-1997, as modified by Section 5.3 of this Agreement.

§ 6.2 [Not Used.] In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of AIA Document A201-1997 shall have the meanings assigned to them in AIA Document A201-1997 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-1997 shall mean the Cost of the Work as defined in Article ~~Section~~ 7 of this Agreement, and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Section 5.1.2 of this Agreement.

§ 6.4 [Not Used.] If no specific provision is made in Section 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

The term Cost of the Work shall mean costs necessarily and reasonably incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7, as supplemented by Exhibit B (General Conditions Costs & Categories). The Cost of the Work does not include any costs in excess of the Guaranteed Maximum Price, as adjusted under this Agreement.

§ 7.1.1 Cost, as defined herein, shall be actual costs paid or incurred by the Contractor, less all discounts, rebates and salvages, which are obtained by the Contractor, subject to Article 9 of this Agreement. All payments made by Owner pursuant to this Article 7, whether those payments are actually made before or after the execution of the Contract, are included within the Guaranteed Maximum Price specified in Section 5.2 above. Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 7 or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of reimbursable categories.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages, exclusive of any markups imposed by Contractor (other than those allowed by Section 7.2.4), of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops. Bonuses to Contractor's employees shall only be reimbursed if Owner, in its sole discretion, approves in advance in writing. Profit sharing or retirement plan contributions made to or for the benefit of Contractor's employees are not reimbursable.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's approval. Salaries of (i) Contractor's personnel, as set forth in Exhibit B, when stationed at the field office, employed full time in the furtherance of the Work, and (ii) safety manager, scheduling clerk, secretary and other personnel as set forth in Exhibit B and approved by Owner stationed at the home office to the extent such personnel's time is spent performing Project Work. Contractor shall support all such costs with detailed records setting forth the time spent and, if requested by Owner, describing in detail the Work performed.

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 14 the personnel to be included and whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 7.2.3 Wages As set forth in Exhibit B, wages and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time reasonably and necessarily required for the Work.

§ 7.2.4 Costs As set forth in Exhibit B, costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, but not merit or other bonuses or profit sharing benefits, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3. Burden and mark up for direct hire labor shall be as set forth in Exhibit B.

§ 7.3 SUBCONTRACT COSTS

§ 7.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts properly entered into under this Agreement.

§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ 7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work and shall be properly stored at the Project site or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ 7.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities (as set forth in Exhibit B), machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value. For purposes of this Section 7.5.1, any item costing less than Five Hundred Dollars (\$500) shall be assumed to have been consumed in the Work, and no item that costs more than Five Hundred Dollars (\$500) will be considered to have been consumed during the progress of the Work unless actually shown to have been so consumed or unless the item's intended ordinary use requires that it be consumed during the progress of the Work. Contractor shall maintain an inventory list of all items purchased by or on behalf of Owner. The Contractor acknowledges that all tools, equipment and other items purchased in connection with the Work (and if purchased under allowance are subject to Owner's prior approval) are the property of Owner. Upon completion of the Work and before Final Payment, the Contractor shall, at Owner's option, transfer to Owner, sell to a third party or transfer to itself at the then-current fair market value thereof all hoists, scaffolding, forms, handtools and other items purchased for use in performing the Work, whose cost is included in the Cost of the Work. The amounts received from any such sale or transfer (or the fair market value thereof in the case of a transfer to Contractor) shall be paid to the Owner.

§ 7.5.2 Rental charges for necessary temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior written approval. Rental charges for Contractor-owned equipment shall be based on the following:

§ 7.5.2.1 Rental rates shall be based on 90% of the applicable rates for equipment listed in the "Green Book" Rental Rates & Specifications for Construction Equipment, latest edition, published by the Associated Equipment Distributors, 615 West 22nd Street, Oakbrook, Illinois, 60523.

§ 7.5.2.2 Rental rates for equipment not listed in the "Green Book" shall be based on 90% of the applicable rates for equipment listed in the "Blue Book", latest edition published by Dataquest, 1290 Ridder Park Drive, San Jose, California, 95131.

§ 7.5.2.3 Rental rates determined from the "Green Book" or "Blue Book" include all items of cost and expense to the Contractor including gas, oil, maintenance, repairs, insurance, and transportation to and from construction site.

§ 7.5.2.4 In no event shall the Contractor be entitled to reimbursement for any cumulative total of rental charges in connection with any single type of equipment in excess of seventy-five percent (75%) of the fair market value of the equipment on the date that the equipment is first rented for the Project. The Contractor shall pay any excess rental charges. Any equipment purchased by the Contractor for the Project shall become the property of the Owner at the completion of the Project if the Owner reimburses the Contractor for the equipment's purchase price.

§ 7.5.3 Costs of removal of debris from the site.

§ 7.5.4 ~~Costs~~As set forth in Exhibit B, costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 7.5.5 That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work with Owner's written approval. Such expenses incurred by employees of the Contractor not permanently stationed at the field office must be approved in advance by the Owner. Commuting expenses are specifically not to be charged separately, but rather shall be included as part of the hourly rates of Contractor's personnel.

§ 7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner in writing and if Contractor complies with General Conditions Section 9.3.2.

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 That portion of insurance and bond premiums that can be directly attributed to this Contract, ~~Worker's~~ Compensation and Employer Liability Insurance shall be charged at the rates established by the State of Maryland. In the event Contractor elects to self insure against one or more risks associated with the Work, Contractor's cost of insurance for such risks shall be deemed to be the lowest guaranteed cost then available to Contractor under a fully insured program. Contractor's reimbursement for liability and builder's risk insurance, and for payment and performance bonds, shall be at the rates set forth in Exhibit B and shall include the deductible for property insurance set forth in such policies. Contractor shall not be entitled to a Fee on insurance or bond costs.

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

§ 7.6.3 Fees and assessments ~~for the building permit and for other permits,~~ licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-1997 or other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17.1 of AIA Document A201-1997 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 As set forth in Exhibit B, ~~d~~Data processing costs related to the Work.

§ 7.6.7 Deposits lost ~~for causes other than~~ due to the Contractor's Owner's negligence or Owner's failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

§ 7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, or preparation of this Contract, any subcontract, purchase order or similar document, and that are reasonably incurred by the Contractor in the performance of the Work and with the Owner's prior written approval; which approval shall not be unreasonably withheld.

§ 7.6.9 ~~[Not Used.] Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.~~

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ 7.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of AIA Document A201-1997.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers shall be a Cost of the Work unless (1) it is caused by the Contractor's own negligence, or (2) it is caused by the negligence of one of the Contractor's Subcontractors or suppliers and Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Contractor shall make all reasonable efforts to recover such costs from any insurance, sureties, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.

§ 7.7.4 Costs incurred due to the default of Subcontractors or suppliers that are not recoverable from such Subcontractors or suppliers or such entities' bond or surety companies, provided that such default is not caused by the Contractor.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include any of the items set forth in this Section 8:

§ 8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Sections 7.2.2 and 7.2.3, or as may be provided in Article 14.

§ 8.1.2 Expenses of the Contractor's principal office and offices other than the site office including, without limitation, the services of the Contractor's purchasing, estimating and accounting departments and clerical staff, sales, legal, labor relations, safety, insurance and tax departments, the cost of professional association membership and all other costs of doing business, services and related expense and overhead required or desired to maintain and operate such offices, except as set forth in Section 7.2.2 above, other than the site office.

§ 8.1.3 Overhead (including unabsorbed or extended home office overhead and Eichleay-type damages), profit, and general expenses, except as may be expressly included in Article 7.

§ 8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

§ 8.1.5 Rental costs of machinery and equipment, except as specifically provided in Section 7.5.2.

§ 8.1.6 Except as provided in Sections 7.7.3 and 7.7.4 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

§ 8.1.7 Any cost not specifically and expressly described in Article 7.

§ 8.1.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the initial Guaranteed Maximum Price (as adjusted as allowed under this Agreement) to be exceeded.

§ 8.1.9 [Not Used.]

§ 8.1.10 Cost of any gift to Contractors' or Subcontractor's employees and cost of any bonus, except as set forth in Section 7.2.1.

§ 8.1.11 All moving costs associated with the relocation of Contractor personnel for the purpose of staffing the Project.

§ 8.1.12 Any of Contractor's federal, state or local income taxes or franchise or personal or real property taxes or the cost of any licenses obtained for the general conduct of Contractor's business.

§ 8.1.13 Losses and expenses that are reimbursable by insurance required to be maintained by the Contractor under this Agreement.

§ 8.1.14 Subject to Section 9.10.3 of the General Conditions of the Contract, cost of labor and materials for Work related to completing punchlist items more than sixty (60) days after Substantial Completion (unless such delay is caused for reasons beyond the Contractor's control) and cost of performing warranty Work provided under this Agreement after the date of final payment, except as specifically otherwise agreed by Owner and Contractor.

§ 8.1.15 Losses and expenses reimbursed to Contractor by a third party.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured. The Contractor shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work prior to providing the Owner with seven (7) days prior written notice of the potential discount, rebate or refund on behalf of Owner in accordance with the requirements of this Section 9.1.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 ~~Those~~ Without otherwise limiting Contractor's rights to obtain bids, those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons or entities from whom the Contractor shall obtain bids. The Contractor shall obtain at least three (3) competitive bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect and Owner, unless Owner directs otherwise or Owner concurs in writing that competitive bidding is not practical. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.1.1 Owner may be present when all bids are received and reserves the right to review all bids submitted. After the receipt of bids, Contractor shall submit to Owner, for Owner's review, (i) a bid analysis and list of proposed Subcontractors for the performance of any portion of the Work, (ii) the scope of the Work to be performed under the respective Subcontract, (iii) a reasonably detailed estimate of the Cost of the Work based on such bids, as well as differences between the bids and the bid analysis, and (iv) a list of alternate selections of persons or entities for each proposed Subcontractor and their respective bids. Contractor shall consult with Owner before awarding the Subcontracts and shall provide Owner with a copy of each proposed Subcontract for Owner's review. Contractor shall provide Owner with a conformed copy of each executed Subcontract.

§ 10.2 If a specific bidder among those whose bids are delivered by the Contractor to the Architect and Owner (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work in a timely and workmanlike manner; and (3) has submitted a bid that is not artificially or unreasonably low and that conforms to

70 73

the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then, unless the Owner has reasonable objection to the bidder and such bidder was not on an Owner-approved bid list, the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. All Subcontracts shall be competitively bid, and no tradework shall be performed by Contractor, or any entity related to or affiliated with Contractor, without Owner's express, written authorization. Contractor shall disclose to Owner, in writing whether Contractor, its officers, directors or any person related to them has an ownership interest in any proposed Subcontractor, Sub-Subcontractor, fabricator or supplier.

§ 10.4 Value engineering or cost saving alternative proposals contained in any Contractor or Subcontractor bids must be set forth as alternates to the bid required by the Drawings and Specifications. Exhibit P identifies the value engineering alternates that are included in the GMP.

§ 10.5 Except as otherwise agreed to in writing by the Owner and the Contractor, the Contractor shall competitively bid any trade Work that the Contractor wishes to perform with the Contractor's own labor, or through an Affiliate, and shall obtain no less than two (2) additional responsive bids (if possible) from responsible Subcontractors acceptable to the Owner. The Contractor, or an Affiliate, shall be permitted to perform such trade Work only if the Owner consents thereto in writing after full written disclosure by the Contractor to the Owner of the affiliation or relationship of such Affiliate to the Contractor and the Owner approves in writing any subcontract, contract, purchase order, agreement or other arrangement between the Contractor and such Affiliate in form and substance. The Contractor shall receive the applicable Contractor's Fee on trade Work performed with its own forces in addition to any profit and overhead included in the price accepted by the Owner for such trade Work. If an Affiliate is performing such Work, it shall do so under a subcontract meeting the requirements set forth herein and in the Contract Documents. The term "Affiliate" shall mean any party or entity related to or affiliated with the Contractor or in which the Contractor has a direct or indirect ownership or control, including without limitation: (x) any entity owned in whole or in part by the Contractor, (y) any party or entity with more than a ten percent (10%) interest in the Contractor, and (z) any entity in which any officer, director, management employee, partner or shareholder (or member of any such person's family) of the Contractor or any entity owned by the Contractor has a direct or indirect interest.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. Contractor shall check all materials, equipment and labor entering into the Work and Contractor shall keep full and detailed records and accounts and exercise such controls for proper business and financial management, in accordance with sound business practices and generally accepted accounting principles consistently applied, under this Contract; the accounting and control systems shall be satisfactory to Owner. Owner and Owner's authorized representatives and accountants shall be afforded access to, and the right to copy at Owner's expense, Contractor's estimates and take-offs prepared for this Project, records, books, accounts, data, daily logs, diaries, project records, correspondence, instructions, drawings, receipts, canceled checks, subcontracts, purchase orders, Project computer disks, vouchers, memoranda and other data relating to this Contract for the purpose of conducting reviews, examinations or audits, and Contractor shall preserve all such business and financial records for a period of three years after final payment, or for such longer period as may be required by law. To the extent Contractor keeps its business and accounting records on a computer system, Contractor shall provide Owner access to that system only for the purpose of assisting with any audit or for expediting the transfer of job costs and information to Owner's accounting system. The periods of access for records related to (i) litigation or the settlement of claims arising out of the performance of this Agreement or (ii) costs and expenses under this Agreement, exception to which have been taken by Owner or its authorized representatives, shall continue until such litigation, claim or exception has been resolved.